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Building Women into Peace: the international legal framework

CHRISTINE CHINKIN & HILARY CHARLESWORTH

ABSTRACT *Peace-building is now a major aspect of the work of international institutions. While once the international community aimed simply to maintain a ceasefire and restore some form of stability in conflict zones, since the early 1990s there has been increasing attention given to creating peaceful and democratic societies through international intervention. A common problem in international peace-building projects over the past decade has been the position of women, particularly their limited involvement in the institutional design of peace-building strategies and the possibility that peace-building may actually reduce local women's agency in society. This article discusses the modern enterprise of peace-building and identifies international legal principles that can serve as a framework for peace-building projects in which women's lives are taken seriously.*

Peace-building has become a major industry in international institutions. While once the international community aimed simply to maintain a ceasefire and restore some form of stability in conflict zones, since the early 1990s there has been increasing attention given to creating peaceful and democratic societies through international intervention. Examples of peace-building exercises include Cambodia, Bosnia, Kosovo, East Timor, Afghanistan, Sierra Leone and Iraq. The significance of peace-building on the international agenda is emphasised by the joint establishment by the General Assembly and Security Council of a UN Peacebuilding Commission in December 2005.¹ The Commission is a 31-member intergovernmental body whose functions will be to develop strategic policy and to monitor, co-ordinate and evaluate UN peace-building activities.

The move to peace-building has been generally acclaimed as a valuable activity, although some of its critics have dismissed it as mere 'social work', taking resources away from the proper military focus of international security.² Other observers have pointed out that peace-building is almost always carried out in Third World countries and raises questions of neo-colonialist imposition of standards of 'civilisation'.³ These questions are

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intensified where the states participating in peace-building activities had earlier intervened militarily, as for instance in Kosovo, Afghanistan and Iraq. A common theme emerging from international peace-building projects over the past decade are the problems confronting women in this enterprise: their limited involvement in the international institutional design of peace-building strategies and the possibility that peace-building may actually reduce local women's agency in society. Women in the countries referred to above have had ambivalent outcomes from peace-building projects. The aim of this article is to identify international legal principles that can serve as a framework for peace-building projects that take women's lives seriously.

Peace-building was defined by UN Secretary-General Boutros Boutros-Ghali in 1993 as 'action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict'.⁴ He envisioned peace-building measures such as disarmament, restoring order, the custody and possible destruction of weapons, repatriation of refugees, support for security personnel, election monitoring, human rights protection, reforming or strengthening of governmental institutions and promoting formal and informal processes of political participation.⁵ In 1998 UN Secretary-General Kofi Annan adopted a similar statement but added the task of 'providing for reintegration and rehabilitation programmes, and creating conditions for resumed development'.⁶ This encompassed socio-political and economic reconstruction of society, including power sharing, establishing constitutional, administrative and legal structures and determining resource allocation. In addition peace-building was understood to include the physical reconstruction of a society—houses, roads, schools, electricity, sewage, hospitals and other infrastructure.

One striking omission from these accounts was the impact on women and their role in the processes of peace-building.⁷ In 2000 the Special Session of the UN General Assembly reviewing the progress of the outcomes of the Fourth World Conference on Women, Beijing + 5, emphasised the need to ensure women's participation throughout 'all levels of decision-making and implementation in development activities and peace processes'.⁸ The value of women's participation in the prevention and resolution of conflicts and in peace-building was reinforced later that year in Security Council Resolution 1325 on Women, Peace and Security.⁹ The resolution called for the inclusion of a 'gender perspective' in post-conflict settlements, 'including the special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction'. Resolution 1325 also endorsed 'measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary'.

Security Council Resolution 1325 is addressed to 'all actors involved, when negotiating and implementing peace agreements'. While there are variations, these activities are likely to involve four main sets of players: the post-conflict authority (a national authority or an international administration, or some combination of both and often transitional until the holding of elections and the adoption of a national constitution), international or regional

institutional personnel, both civilian and military, members of international non-governmental organisations and the local population. Peace-building responsibilities are primarily allocated between the first two of these groupings and the separate functions of different institutions are likely to be spelled out in a peace agreement or other settlement, such as a Security Council resolution.

Security Council Resolution 1325 endorses two separate policies in the design and implementation of post-conflict reconstruction: 'gender balance' in participation throughout all processes for decision making, policy making and operationalising measures for post-conflict peace-building; and 'gender mainstreaming' in the formulation of all peace-building policies, practices and law and in their implementation. The references to 'gender' in the international vocabulary of peace-building are almost invariably references to women, circumventing the more radical implications of the concept, which would draw attention to masculine identities that are implicated in conflict and peace-building. The scope of Resolution 1325 has been analysed in two major studies: one prepared by the UN Secretariat¹⁰ and one prepared by United Nations Development Fund For Women (UNIFEM).¹¹ These documents contain detailed recommendations on the implementation of the Resolution and are a valuable resource for peace-building operations.

The international interest in women and peace-building is reflected at the national level. Indeed, the situation of women in societies that are targeted for peace-building is now sometimes used as a justification for restructuring. For example, the USA and UK offered the oppression of women by the Taliban in Afghanistan as one reason for military intervention in 2001.¹² Security Council Resolution 1383 noted the provisional arrangements of the 2001 Bonn Agreement to be a 'first step towards . . . a broad-based, gender sensitive, multi-ethnic and fully representative government' in Afghanistan.¹³ Women have also featured in the official White House material on Iraq and the USA notes regularly that 'women's rights are at the core of building a civil, law-abiding society, a pre-requisite for true democracies'.¹⁴ The post-invasion Security Council Resolution 1483 acknowledging the USA's nation-building activities in Iraq contained a preambular reference to Resolution 1325.¹⁵

How have these international statements with respect to women and peace-building been translated into action? With respect to the 'gender-balance' strand in Resolution 1325, there has been only modest progress.¹⁶ For example, in Iraq women's participation in public life and in the design of the new political order has regularly been sacrificed to pacify vocal religious groups.¹⁷ Members of the US military have said that they were anxious not to antagonise local religious groups by supporting women's appointments until proper security was established.¹⁸ Although quotas for women's seats in legislatures have been included in both the new Afghani and Iraqi constitutions, the notion of 'gender balance' becomes translated as no more than 25% of women.

The second aspect of Resolution 1325, 'gender mainstreaming' in peace-building, has been defined as ensuring that a 'gender perspective is part of every policy consideration, be that the design of a public information

campaign, the creation of an advisory body, a draft law, or devising reporting guidelines and priorities'.¹⁹ Peace-building operations since the adoption of Security Council Resolution 1325 in 2000 have not lived up to this commitment. Gender mainstreaming is rarely explicitly included among the designated functions of transitional authorities or international agencies, other than a general provision to the effect that account be taken of the needs of women as victims of conflict.²⁰ This type of commitment draws attention to the specific needs of women but gives no guidance as to how to do this and who is to take responsibility. Further, it frames women as victims, not as actors in peace-building with transformative potential. Thus there is no reference to the expertise that typically exists in local women's communities and organisations. This silence accentuates another pitfall of gender mainstreaming, which is that its practical application too often rests on the willingness and commitment of particular individuals to give it effect; the policy has a tendency to become an additional task bestowed upon, or assumed by, an already overburdened person—frequently a woman—who 'shows an interest in gender'. Unless the responsibility is specifically allocated and effective monitoring mechanisms are put in place, gender mainstreaming can justify no-one taking action.

There has been some attempt to encourage UN field offices to address particular gender issues or to provide training, and administrative units dedicated to gender issues have been introduced. The United Nations Interim Administration Mission in Kosovo (UNMIK) was the first peacekeeping mission to have such a unit. In East Timor a gender unit was proposed in the original structure of the UN authority UNTAET there, but it was not implemented because of budget priorities. The Gender Affairs Unit was ultimately reinstated in April 2000 after pressure from senior women within the UN.²¹ As gender units become accepted as parts of peace-building missions, institutional precedents are created, but there is a need to ensure that their inclusion does not marginalise gender because other parts of the international administration consider it outside their mandate. It is also necessary for account to be taken of the particular local context and for local women to be included as full participants in these projects and not regarded just as support or service staff.²²

Questions can also be raised about the philosophy of gender mainstreaming more generally. The concept is sometimes defined in such a broad manner that it becomes meaningless. For example, UN Secretary-General Kofi Annan has said, in the context of peacekeeping, that gender mainstreaming 'must ensure that the contributions, needs and priorities of all stakeholders—women and men, boys and girls—are taken into account in the planning and implementation of peacekeeping operations, and that they can all influence, participate and benefit equally'.²³ This sweeping definition means that the notion of gender mainstreaming is deprived of any force. At the same time, gender mainstreaming is often understood quite narrowly as simply treating women in the same way as men.²⁴ Even when there is a serious attempt to pay attention to the needs of women, focus on the differential impact of measures on women and men can obscure the particular needs of women and the ways

in which apparently gender-neutral goals can disadvantage or marginalise women.

Women and peace-building

The context of peace-building is inevitably fraught for women. The notion that there is a 'post-conflict' phase that allows peace-building to proceed does not correspond with reality and there can be no assumption that the violence stops with a formal ceasefire. The forms and locations of violence may change at the cessation of active conflict but violence against women is likely to be a continual phenomenon. As is the case currently in Iraq, the collapse of civilian structures may mean continuing and pervasive lawlessness. Security for all is highly compromised, including gendered forms of insecurity.²⁵ The widespread availability of small arms, unemployment and economic insecurity, and demobilised former combatants all contribute to continued violence against women. Amnesty International has reported that women in Iraq have been subjected to rape, death and restriction of movement with no protection from the authorities. The fear of violence inhibits women from leaving their homes and has restricted their participation in civil society, particularly in education, employment and political decision making.²⁶ Women who have entered the political scene have been threatened and murdered. A conservative backlash has added to the insecurity through groups taking revenge on each other by raping women. Raped women have been killed by their own families because of what is seen as the shame brought on their families' honour by the rape.²⁷ Similar insecurity is found in Afghanistan.²⁸ The idea that security can be created through military force does not take account of gendered threats to women's security. Nor does it investigate or challenge power relations within the state.

Another issue is that women typically bear the greatest burden of managing post-conflict relations with war-traumatised children, family members and former fighters. Demographic changes flowing from the conflict, such as the disproportionate number of women and women-headed households, affect issues such as access to and ownership of property, housing, caring responsibilities, and return after internal or international displacement. In many cases concepts such as 'reconstruction' of a society may be problematic for women. Such ideas assume an element of going back, restoring to a position or capacity that previously existed. But this is not necessarily what women seek. It is possible that conflict will have empowered women and opened up new opportunities that did not previously exist. In such a context, women become interested in the goal of social transformation rather than restored dependence and subordination. As Sheila Meintjes has observed:

women do gain from the shifts in gender relations during the war; they may lose their wartime gains in the cusp, in the period between war and peace. Thus the transition from war to peace emerges as a critical moment in the shifting terrain of gender power.²⁹

Of course, women's interests in peace-building will vary widely according both to their experiences throughout the conflict and their immediate position. Former female combatants may face particular difficulties in reintegration, especially where they are perceived as having transgressed gender stereotypes or where demobilisation programmes are directed towards male combatants. Some women may have been active in the transfer of small arms and face destitution if this is stopped. Those who are pregnant or who have given birth to children as a result of rape may face deep hostility. So too will those who have sexually transmitted disease, including HIV/AIDS. There may be girls who were abducted and forced to 'marry' their abductor. Women from the diaspora can find on their return home that their perceptions and goals differ from those who have lived through the conflict.

Women in conflict zones themselves have clear ideas about priority issues within their own context. For example, women in Burundi asserted the need for measures to protect women and girls, including mechanisms for the prosecution of crimes of sexual violence, legalisation on women's right to inherit land, and access to education for girls. Liberian women united over the need for disarmament over elections.³⁰ The goals of women from the Democratic Republic of the Congo were the inclusion of women in transitional government, addressing violence against women, addressing impunity, disarmament, reintegration of child soldiers and support for traumatised civilians.³¹ Women require a safe and secure space to be able to reflect on their needs, to articulate their conclusions and to have them taken seriously in peace-building.

International agencies often do not have adequate information about local initiatives and programmes run by women's groups. For example, a Kosovo women's network complained that 'the international community has marginalised us women in a way we never have been before. We have never felt so pushed aside as we feel now.'³² At the same time it cannot be assumed that grassroots community involvement necessarily ensures greater attention to women, as international and regional personnel regularly focus on liaison with male-dominated community groups.

The international legal framework of peace-building

Can international law support the interests of women in peace-building? Peace-building operates in the framework of international treaty, customary law and general principles of law. These include the principles and rules deriving from human rights law; international humanitarian law; international criminal law; prohibition of the use of force in international relations; the right to economic and social rights and to sustainable development; the obligation for the peaceful settlement of disputes; the emerging law of transitional justice; refugee law; and the principles on internal displacement.

Feminist critiques of international law have argued that the discipline's structural hierarchy is biased towards male interests in a way that silences and marginalises women.³³ This analysis is applicable to the values that are

seen as central to peace-building: human rights, democracy and the rule of law. These ideals have been challenged as providing a one-sided vision of the good life that assumes a male subject and excludes women from its ambit. For example, international human rights law has traditionally offered very little to women: it is predicated upon protecting men from state intervention in areas of concern to them rather than upon guaranteeing human dignity and optimum choice to all individuals.³⁴

These critiques focus on the operation and interpretation of international law rather than on its basic nature. If international law is understood as a method of controlling the use and abuse of power,³⁵ it can provide protection against arbitrary determinations and unfettered discretion and therefore a basis for accountability. In this sense international law can offer women a language recognised by states in which to claim an entitlement to be involved in policy and decision making about peace-building. International law also creates a framework for those implementing peace-building measures that allows for the assessment of policies and practices against stated criteria. The use of international law should be informed by an awareness of its shortcomings with respect to women and a willingness to take measures to redress them.³⁶ This task is facilitated by the adoption from the 1990s onwards of treaties and declarations of political consensus, which have attempted to take greater account of women.

Another type of objection to using international law as a framework for peace-building is its colonial origins. Although international law provided the legal basis for decolonisation and self-determination, its Western genealogy, selective application and perceived double standards undermine its claim to objectivity and impartiality.³⁷ International law has been used to designate 'failed' states, leading to Western intervention, for example in Somalia, and to situations where the West has failed to intervene to prevent, or at least lessen, tragedy, for example in Rwanda. Can an international legal framework be applied for the empowerment of women in the Third World that is not open to rejection as a further form of intervention and neo-colonialism? This is a significant challenge for giving effect to Security Council Resolution 1325.

In the African context the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (PRWA),³⁸ which came into force in 2005, is a significant tool for peace builders. The PRWA recalls Security Council Resolution 1325 in its preamble. It provides for a right to peace and declares that women have 'the right to participate in the promotion and maintenance of peace'.³⁹ The PRWA requires states parties to take all appropriate measures to ensure the increased participation of women in all aspects of post-conflict reconstruction and rehabilitation. Effective peace-building is aimed at preventing future conflict and states have a similar obligation with respect to the processes and structures of conflict prevention, management and resolution. Integral to long-term peace-building is sustainable development. The PRWA builds upon the UN General Assembly's formulation of the right to development⁴⁰ by requiring states parties to ensure women's right to, and participation in, sustainable

development and 'to introduce the gender perspective in the national development planning procedures'.⁴¹

We focus below on international human rights law to outline the potential of international legal standards to secure women's involvement in peace-building.

International human rights

Equality and culture

International human rights guarantees underpin physical, economic and legal security and must be the foundation for all peace-building. However, a requirement that peace-building is conducted in accordance with international human rights standards is not in itself sufficient to guarantee to women the same protection of their rights as men. Nor is it sufficient to list or annex the main international human rights instruments—as was done for example in the 1995 Dayton Peace Agreement which set out the structure for peace-building in Bosnia-Herzegovina. Commitment to the concept of women's human rights is required through incorporation into national legal systems and being given constitutional priority, including over customary or religious law.

International human rights law requires a prohibition of discrimination on the grounds of sex and a guarantee of women's right to full personhood and equality before the law.⁴² While many constitutions that have been produced as part of a peace-building project contain a principle of non-discrimination on the basis of sex, a guarantee of equality has been much harder to achieve. For example, although Afghanistan became a party to the Convention on the Elimination of All Forms of Discrimination against Women in March 2003 in the aftermath of the fall of the Taliban, this has had little impact on the lives of Afghan women, with armed groups abducting and raping girls with impunity and women who experience discrimination and violence being unable to obtain any redress.⁴³

After conflict there can be a desire to reaffirm traditional life and practices, which may be detrimental to women's enjoyment of their human rights. It is in this context that those implementing peace-building measures must ensure that they talk to women and do not take assertions made by male community leaders about cultural imperatives as necessarily reflecting the views or realities of women in the community. A salutary example is from Kosovo, a society where traditional values and culture have strong resonance. The UN-appointed expert to an inter-agency legal working group on domestic violence in Kosovo was a male professor of family law who stated that 'it would be unthinkable to forbid all kinds of domestic violence' in Kosovo. The working group accepted this viewpoint at face value until a local female prosecutor strongly countered it.⁴⁴

The 2005 Iraq Constitution provides another example of a lack of balance between women's rights and assertions of religious culture. While there are guarantees of women's rights and human rights in the constitution, it also proclaims Islam as the country's official religion and a 'basic source' of law.

Laws inconsistent with Islam will be invalid.⁴⁵ Iraqi women's groups have pointed out that the interpretation of women's rights will rest with religious judges and their protection will thus remain precarious. Iraqi women told a Security Council meeting marking the fifth anniversary of Resolution 1325 that 'We . . . record our reservation to the constitution because the bulk of the document is aimed at weakening state power and laws and will instead benefit religious, sectarian, tribal and regional establishments. Hence it will consolidate stereotypical images of women and will subordinate universal human and women's rights.'⁴⁶

Noah Feldman, a US lawyer who worked with the Coalition Provisional Authority in Iraq, has concluded that international standards should not be imposed on or even influence new democracies.⁴⁷ New constitutions, according to Feldman should 'get off the ground through a process of adoption by localized self-interest, not out of episodic external pressure that will soon be lifted'.⁴⁸ Feldman's prescription of deference to 'localised self-interest' in the context of women's rights allows particular, and often religiously fundamentalist, local male elites to define the substance of the constitutional settlement. Women's rights are unlikely to appeal to self-interest of such elites. The Feldman approach also assumes that there is one set of 'local' views that should be respected and ignores the role and aspirations of 'internal reformers'⁴⁹ within a particular society. The respect for 'culture' in the international community in peace-building projects is often based on a monolithic view of 'culture', as though it had no internal diversity and no potential for a critical tradition or a commitment to human rights.⁵⁰ A similar approach is often taken by international agencies, which regard cultural traditions as private and not therefore within their mandate, or as something trivial which can be negotiated away. The relevant international legal standards, however, provide otherwise. Thus the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires states to:

modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.⁵¹

This provision is developed further in the PRWA, which requires states parties to 'commit themselves to modify the social and cultural patterns of conduct' with the aim of eliminating harmful cultural and traditional practices.⁵² Article 5 provides that states parties 'shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised practices' and Article 17 asserts the right of women to live in a 'positive cultural context'.

Economic and social rights

The guarantee of economic and social rights is crucial to peace-building and is supported by international law. The 1993 Vienna Declaration and

Programme of Action denied any hierarchy of rights by declaring that ‘All human rights are universal, indivisible and interdependent and interrelated’.⁵³ Particularly important economic and social rights in peace-building include the right to the highest attainable standard of physical and mental health;⁵⁴ the right to just and favourable conditions of work;⁵⁵ the right to an adequate standard of living;⁵⁶ the right to social security;⁵⁷ and the right to education.⁵⁸ These rights, however, are often ignored, or given weak protection, in constitutional settlements. For example, the 2003 Liberian Peace Agreement refers to ‘basic civil and political rights’, including the rights to life, liberty and freedom from torture, without reference to economic and social rights.

Economic and social rights must be guaranteed to women on a non-discriminatory basis,⁵⁹ although this principle is regularly ignored in peace-building. For example, in Angola, disabled men received prostheses from the army and other organisations while women—largely victims of landmines—for some time did not receive such aids. In Rwanda there have been concerns that male prisoners accused of offences arising from the genocide are receiving drugs for HIV/AIDS to keep them alive for trial, while women victims of rape are not. An Amnesty International report on the eastern Democratic Republic of Congo concluded that one of the most pressing needs for women survivors of wartime rape is emergency healthcare, but it is one that is rarely delivered.⁶⁰ Education is also central to the reconstruction of society and is repeatedly asserted by women as their priority in peace-building. The positive obligation to respect, protect and fulfil the right to education and the obligation to remove gender and other stereotyping which impedes access to education of girls, women and other disadvantaged groups has been emphasised by the UN Committee on Economic, Social and Cultural Rights.⁶¹ The reluctance to support economic and social rights at the international level by the USA, which is not a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), CEDAW or the Convention on the Rights of the Child (CROC), contributes to the lack of attention to these rights in peace-building, although this weakens the possibility of creating a truly democratic order. Strong language protecting economic and social rights in early drafts of the 2005 Iraq Constitution, for example, was watered down in the final product.⁶² The failure to prioritise economic, social and cultural rights also assigns the economic and social imperatives of post-conflict reconstruction to international financial institutions, which have limited interest in a human rights framework.

Violence against women

As already indicated, gender-based violence against women is a continuing problem for women in peace-building.⁶³ It can be the product of post-traumatic stress, or of the need for men to reassert control in their households, which had been headed by women during the war, or of the sense of men facing dislocation and unemployment on return. The destruction of communities in the conflict may also mean the loss of social structures that

have previously offered a safety-net against such violence. The violence is a form of sex discrimination, a direct violation of women's human rights and in turn causes violations of other rights.⁶⁴ Violence, especially within the home, is, however, rarely understood as a threat to peace-building. Post-conflict arrangements may make provision for the reintegration of soldiers into society, but they rarely deal with the situation of women subjected to violence during conflict and in its aftermath.

Peace agreements rarely make reference to the need to eradicate violence against women. The Liberian Peace Agreement states that 'The National Transitional Government of Liberia shall accord particular attention to the issue of the rehabilitation of vulnerable groups of war victims (children, women, the elderly and the disabled) within Liberia, who have been severely affected by the conflict in Liberia'. However, this wording does not indicate the existing international legal framework dealing with violence against women provided by the 1993 General Assembly Declaration on the Elimination of Violence against Women,⁶⁵ the 1993 Vienna Declaration and Programme of Action,⁶⁶ and the 1995 Beijing Declaration and Platform for Action.⁶⁷ These documents include requirements for the prohibition of all forms of gender-based violence, including domestic violence, to be incorporated into national legislation.

The PRWA provides for the protection of women against violence, including 'the protection of every woman's right to respect for her dignity and protection... from all forms of violence, particularly sexual and verbal violence'.⁶⁸ It also requires appropriate measures to prohibit all forms of violence against women, including unwanted or forced sex.⁶⁹ In addition to the measures for the punishment of perpetrators there are also commitments to the rehabilitation of women victims and reparation for violence. The linkage between eradication of violence against women and peace-building is confirmed in article 4(d) of the PRWA, which calls on states parties to 'actively promote peace education' with a view to eradicating 'beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women'.

There are two particular issues of violence against women that are especially relevant to peace-building. The first is that, although the presence of international or regional institutional military and civilian forces can provide a safe space for the civilian population in place of the conflict and fear of attack that preceded their mobilisation, the presence of large numbers of unattached men also creates physical security concerns for women. International workers can create the potential for increased prostitution, sexual violence and connivance or participation in trafficking of women and children. Provision of regular training in gender relations and cultural mores, including awareness of the potential for the social exclusion of women who suffer sexual abuse or have sexual relations with foreign men, should be essential for all involved in peacekeeping and peace-building. Training of the police force, immigration officers, security services and other officials in 'democratic values and respect for human rights, a non-partisan approach to duty and the avoidance of corrupt practices' is provided for

in the Liberian Agreement. The agreement does not refer to gender issues, but its approach could be combined with that of other instruments to encompass gender training. The Beijing Platform for Action requires states actively to encourage, support and implement measures about understanding causes of violence among those responsible for implementing such policies, including law enforcement officers, police, judicial, medical and social workers.⁷⁰

Reports of sexual exploitation by UN peacekeepers in the Democratic Republic of the Congo have led to some institutional responses: a major report of the UN Secretary-General, and recommendations including for troop-contributing countries to take appropriate preventive action and for the UN to make efforts to fully implement codes of conduct and disciplinary procedures to prevent further such acts.⁷¹ The General Assembly has also suggested the formulation of guidelines or manuals relating to violence against women in accordance with the principles contained in its Declaration on the Elimination of Violence against Women. It has invited governments to formulate such manuals for training law enforcement agents, medical personnel and judicial officers, including material on traumatic stress and gender-sensitive counselling techniques.⁷² This approach to training should be extended to those who are responsible for peace-building and to all international personnel present within the country.

The African Charter of Human and Peoples' Rights prohibits all forms of exploitation and degradation, slavery and servitude.⁷³ The PRWA requires states parties to 'prevent and condemn trafficking in women' and also to protect women who are most at risk. The disruption after the end of conflict and the poverty and economic vulnerability make women susceptible to being trafficked.⁷⁴ Women who have fled the conflict zone are also vulnerable to trafficking. International law with respect to trafficking should provide a framework for peace-building measures in this context.⁷⁵

Another major issue for women in peace-building is that of accountability for crimes committed during the conflict. International criminal law has developed a series of principles and doctrines that apply in particular to sexual violence. For example, the jurisprudence of the *ad hoc* international criminal tribunals for the Former Yugoslavia and Rwanda in cases such as *Celebici*,⁷⁶ *Prosecutor v Furundzja*,⁷⁷ *Prosecutor v Kunarac*⁷⁸ and *Prosecutor v Akayesu*⁷⁹ has dealt with issues such as recognition that a single incident of rape can constitute an international crime; the circumstances that constitute rape as torture; genocide; sexual slavery; and the recognition of the coercive circumstances of conflict that make consent irrelevant. The limitations of the tribunals in dealing with violence against women has been criticised, however. One question is whether a punitive approach to crimes can ever resolve a cycle of violence or whether it simply feeds vengeance rather than forgiveness.⁸⁰ Another issue is the focus of the international criminal tribunals on limited categories of crimes and a limited number of perpetrators, which can serve to exonerate those who do not come within the jurisdiction of the tribunals.⁸¹ Yet another is the limited nature of judicial proceedings, which can exclude certain evidence and witnesses, thus leading

to a truncated and partial account of atrocities.⁸² The reluctance of international tribunals to investigate and prosecute violence against women has also been documented.⁸³

These critiques underline the significance of a legal framework for victims and witnesses to be able to approach law enforcement officials in safety and to be able to give evidence without fear of either retaliation or social or familial ostracism. There is little advantage in developing jurisprudence about the nature of international crimes against women if onerous procedural rules inhibit women from testifying, or if stereotypes are used to discredit their testimony. The jurisprudence of the *ad hoc* war crimes tribunals is useful here. Special rules of procedure were adopted by the judges for cases of sexual assault which reject the need for corroboration, assert the irrelevance of the victim's previous sexual history and limit the defence of consent.⁸⁴ The Rules of Procedure and Evidence for the International Criminal Court (ICC) have also dealt with the issue of evidence in cases of sexual violence.⁸⁵ Protective measures are stipulated in the Rome Statute of the ICC, including ensuring confidentiality through *in camera* proceedings and the presentation of evidence by electronic or other special means.⁸⁶ The Rome Statute requires the ICC to establish principles for reparations, including restitution, compensation and rehabilitation.⁸⁷ The international provisions and jurisprudence provide models for national laws relating to substantive law, process and compensation. But the larger questions about the value of criminal prosecutions remain: as Vesna Nicolic-Ristanovic points out: 'Punitive systems of justice, and adversarial systems in particular, do not give victims chances to tell the "whole" truth, as they may define it, nor to convey the complexity of the crime and the lives of both the victim and the perpetrator.'⁸⁸

An alternative to court proceedings dealing with criminal acts is the creation of some type of truth and reconciliation commission as a form of restorative rather than retributive justice. The rationale for such institutions is that allowing accounts of violence to be aired publicly will in itself have a healing effect on a society that is struggling to build peace. There is now considerable international experience with truth and reconciliation commissions and controversy over their efficacy.⁸⁹ It is clear that such alternatives to adversarial court processes do not necessarily respond to the particular situations of women or handle violence against women in a more sensitive manner than courts.⁹⁰ It thus is crucial that institutions of restorative justice understand the nature of gender-based violence and its place in conflict and listen to accounts of, and respond to, crimes against women in a flexible and imaginative way.⁹¹

Economic security

Women's economic security may be undermined in many ways during the peace-building process, for example by discrimination in the context of labour and job allocation and in laws relating to access and ownership of land. In peace-building employment priorities tend to be accorded to men

who were involved in the conflict, or to ensure quotas to members of ethnic, racial or religious minorities. Quotas of this sort can deprive women of access to employment and pension rights, thus contributing to their poverty and that of their children where they are the sole means of family support. Even if the principle of non-discrimination is included within a new constitution, ensuring compliance may be difficult. Local lawyers may not have been trained in discrimination law, and confidence in the independence of the judiciary and in the suitability of law as a means of redress can be low. Women may be reluctant to litigate for lack of resources, of confidence in a fair hearing or for fear of retaliation. Legal provisions relating to non-discrimination in the workplace and equality before the law are therefore required within the framework for peace-building.⁹² The PRWA requires states parties to adopt and enforce measures to guarantee women equal opportunities in work and other career advancement.⁹³ These must be backed by practical programmes for ensuring the availability and accessibility of legal assistance.

Provisions relating to non-discrimination in the workforce and equal pay are irrelevant for the many women who survive only through their participation in the informal economy rather than through waged labour. In a case involving the Ogoni people in Nigeria, the African Commission on Human Rights has discussed states' obligations with respect to economic and social rights, stating:

At a primary level, the obligation to *respect* entails that the State should refrain from interfering in the enjoyment of all fundamental rights; it should respect right-holders, their freedoms, autonomy, resources, and liberty of their action. With respect to socio economic rights, this means that the State is obliged to respect the free use of resources owned or at the disposal of the individual alone or in any form of association with others, including the household or the family, for the purpose of rights-related needs . . . At a secondary level, the State is obliged to *protect* right-holders against other subjects by legislation and provision of effective remedies. This obligation requires the State to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms.⁹⁴

Thus the state should not interfere with the operation of the informal economy without ensuring alternative means of subsistence. This is supported by the PRWA, which requires states parties to 'promote and support the occupations and economic activities of women, particularly within the informal sector'.⁹⁵

In many countries women are excluded from full participation in economic life through unequal access to land and property, which in turn denies them the means of livelihood and security for obtaining mortgages, credit and loans. In agricultural communities this also denies women food security. Landholding systems are complex and highly specialised, especially where they depend upon a mix of legislation and customary law, and communal

and personal property regimes. Women may suffer doubly—through legal discrimination and also through traditional attitudes and customs that deny them property rights, including inheritance.⁹⁶ The position of women with respect to land and property ownership is exacerbated by conflict that destroys existing structures, although they are often prejudicial to women and causes massive displacement.⁹⁷ For example, women may have been able to move on to unoccupied land during the war but they are then evicted by returning owners.⁹⁸ In customary land ownership, where proof of title is through possession and occupation, the land becomes subject to competing claims between displaced persons and new occupiers. Women whose male relatives have died or disappeared and have no recognised capacity to inherit remain dispossessed. Beyani argues that state intervention through legislation, enforceable through the courts, is needed to provide women with full access to land and property and inheritance rights, informed by a human rights approach that addresses their unequal position within the traditional family structure. Such legislation must be informed by a prior audit of the existing legal and *de facto* situation, in which local women have been consulted.⁹⁹

Participation

The participation of women in all peace-building tasks, as well as in the long-term political machinery of the state, is an aspect of good governance and democratic reform but is typically given short shrift. International and regional institutions involved in peace-building do not give adequate priority to the involvement of women in their work.¹⁰⁰ International law supports women's involvement in public life generally; thus CEDAW provides the right to participate for women, 'on equal terms with men' in the formulation of government policy and to perform all public functions, which includes peace-building functions.¹⁰¹ It also emphasises the significance of the involvement of women in international institutions.¹⁰² The UN Committee on the Elimination of Discrimination against Women has argued that 'democracy will have real and dynamic meaning and lasting effect only when political decision-making is shared by women and men and takes equal account of the interests of both'. Thus the 'formal removal of barriers and the introduction of temporary special measures to encourage the equal participation of both men and women in the public life of their societies are essential prerequisites to true equality in political life'.¹⁰³

There is a number of examples of peace agreements providing for power sharing, or for the conversion of a warring entity into a political party, but far fewer that include requirements for women's participation in political structures. Where there is provision for the inclusion of women, the language is likely to be imprecise. For example, the 2003 Liberian Peace Agreement states that members of the Governance Reform Commission 'shall include women' and that members of the National Transitional Legislative Assembly shall come *inter alia* from women's organisations. Article XXVIII of the Agreement provides that: 'The parties shall reflect national and

gender balance in all elective and non-elective appointments within the [government].’

Designated quotas for women are more precise than these vague formulae but they are rarely stipulated in peace settlements. Nor is positive action to ensure women’s participation in political bodies. However, quotas may be agreed in national constitutions as part of the peace-building exercise, for example the 25% seats guaranteed (at least transitionally) for women in the Iraqi National Assembly under the 2005 constitution. Quotas are consistent with international legal standards, for example CEDAW provides for ‘temporary special measures’ to accelerate ‘de facto equality between men and women’.¹⁰⁴ The PRWA requires states parties ‘to take specific positive action to promote participative government and the equal participation of women in the political life of their countries through affirmative action’.¹⁰⁵

Women’s political participation cannot be addressed only by quotas or other measures directed at representation. Nor can it be seen as separate from other issues of representation such as ethnicity or religion. It is critical to analyse obstacles to women’s participation, identifying and training women candidates for public office, facilitating networking between women in politics, including across the region, and education of women voters. Of particular concern is the need to ensure that international or national security is provided for women candidates for political positions and at elections for women voters. States must respect and ensure women’s rights to freedom of expression, movement and association, which includes providing adequate security for the exercise of these rights.¹⁰⁶

Conclusions

The creation of the UN Peacebuilding Commission is an important step for the creation of international policies in this area. How well will the Commission respond to the issues discussed in this article? UN resolutions establishing the Peacebuilding Commission recognise the ‘important role of women in the prevention and resolution of conflicts and in peace-building’ and emphasise the need for women’s ‘full involvement’ in these efforts. It is not clear how these worthy sentiments will be translated into action. For example, the resolutions do not require states to include women in their delegations to the Commission. The top-down nature of the peace-building enterprise is also of concern—membership of the Commission includes representatives from major providers of financial and personnel resources to UN missions, but not from those who have been subject to such efforts. While representatives from a specific country under consideration are included, there is little space created for evidence of past experience of peace-building to be included: the resolutions provide that representatives of international financial institutions ‘shall be invited to participate in all meetings’, while the Commission is only ‘encouraged’ to consult with civil society.

It has been argued that ‘a lasting solution [to conflicts] can only come by a holistic, or comprehensive approach taking into account not only the geographical dimension but also the more subtle and complex psychological,

ethnic and perhaps ideological dimensions'.¹⁰⁷ The position of women and their potential contribution to this process is all too often omitted. Much of the relevant law has been developed comparatively recently, but the obstacles to its implementation include lack of political will, the perception that the active consideration of the impact of peace-building upon women is trivial and unimportant and the failure of donors to specify women-specific projects in peace-building.

There are practical steps that can be taken to respond to the marginalisation of women in peace-building. These include:

- specifying the application of particular peace-building policies and activities to women;
- incorporating the international legal framework for achieving human security for all members of a society;
- including the commitments of Security Council Resolution 1325 into all peace agreements, and making them relevant to the specific context;
- creating a mechanism for states to report regularly on the implementation of Security Council Resolution 1325;
- ensuring that all involved in peace-building are aware of the international legal obligations with respect to women, have adequate resources for the performance of these obligations, and that responsibility for monitoring compliance is allocated to a person of sufficient seniority, with sanctioning power for failure to do so;
- drawing on the international jurisprudence that details the content of human rights guarantees relevant in peace-building, for example the work of the UN human rights treaty bodies; and
- holding international and regional institutions accountable for their own performance with respect to the obligations they have accepted.

Notes

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- 5 *Ibid*, para 55. See also *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the 50th Anniversary of the United Nations*, Report of the Secretary-General on the Work of the Organisation, UN Doc A/50/60-S/1995/1, 3 January 1995, paras 47–56.

- 6 Kofi Annan, *The Causes of Conflict and the Promotion of Durable Peace in Africa*, Report of the Secretary-General to the UN Security Council, UN Doc A/52/871-S/1998/318, 16 April 1998, para 63.
- 7 Although Kofi Annan included the elimination of discrimination against women in Africa as a priority in *ibid*, para 89.
- 8 'Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action', General Assembly Resolution S-23/3, 16 November 2000, para 86(b).
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- 18 Col Carl E Mundy, quoted in *ibid*, p 43.
- 19 A Lyth (ed), *Gender Awareness in Kosovo: Getting it Right? A Gender Approach to UNMIK Administration in Kosovo*, Stockholm: Kvinna till Kvinna Foundation, 2001, p 24.
- 20 One example is the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone 1999 (Lomé Accord), which states in Article XXVIII(2): 'Given that women have been particularly victimised during the war, special attention shall be accorded to their needs and potentials in formulating and implementing national rehabilitation, reconstruction and development programmes, to enable them to play a central role in the moral, social and physical reconstruction of Sierra Leone.'
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- 22 J Mertus, *War's Offensive on Women: The Humanitarian Challenge in Bosnia, Kosovo and Afghanistan*, Bloomfield, CT: Kumarian Press, 2000, p 50.
- 23 Kofi Annan, *Gender Mainstreaming in Peacekeeping Activities*, Report of the Secretary General, UN Doc A/57/731, 13 February 2003. See also discussion in H Charlesworth, 'Not waving but drowning: gender mainstreaming and human rights in the United Nations', *Harvard Human Rights Journal*, 18, 2005, pp 1–18.
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- 37 See A Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge: Cambridge University Press, 2005.
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- 40 'The Right to Development', General Assembly Resolution 41/133, 4 December 1986.
- 41 Article 19.
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- 56 ICESCR, article 11.
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- 93 Article 13.

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