INTERNATIONAL ALERT
Women Waging Peace

INCLUSIVE SECURITY,
SUSTAINABLE PEACE:
*A Toolkit for
Advocacy and Action*

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Justice, Governance and Civil Society

Transitional Justice and Reconciliation

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When violent conflict ends or a harsh totalitarian state collapses, the perpetrators and victims of violence must often resettle together in their communities. This can be immensely difficult when neighbours and even family members have fought on opposite sides of a conflict or attacked each other. The sheer numbers of participants in the violence, the various perceptions of who was in the "right" or in the "wrong" and the presence of struggling state institutions make the pursuit of justice and reconciliation quite complex. Nonetheless it is important to have some means by which to acknowledge crimes committed during a period of totalitarian rule or violent conflict. Often the international community—working with governments and civil society—establishes temporary courts or commissions to provide some sense of justice for victims and initiate a longer-term process of healing.

Women are affected in many ways during war, but there has been particular attention given to sex-based crimes. While such offences are among the worst acts of war, the focus on sex-based crimes to the exclusion of other forms of violence (such as displacement or loss of property) can limit the understanding of the many experiences of women in war and conflict. This chapter highlights the key factors underlying transitional justice processes, drawing attention to the role of women.

1. WHAT IS TRANSITIONAL JUSTICE?

Transitional justice refers to the short-term and often temporary judicial and non-judicial mechanisms and processes that address the legacy of human rights abuses and violence during a society's transition away from conflict or authoritarian rule.

The goals of transitional justice include:

- addressing, and attempting to heal, divisions in society that arise as a result of human rights violations;

- bringing closure and healing the wounds of individuals and society, particularly through "truth telling;"

- providing justice to victims and accountability for perpetrators;

- creating an accurate historical record for society;

- restoring the rule of law;

- reforming institutions to promote democratisation and human rights;

- ensuring that human rights violations are not repeated; and

- promoting co-existence and sustainable peace.

There are two underlying values involved: *justice and reconciliation*. Although they appear to be at opposite ends of the spectrum, the goal in both cases is an end to the cycles that perpetuate war, violence and human rights abuses.

JUSTICE

In the aftermath of conflict or authoritarian rule, people who have been victimised often demand justice. The notion that there cannot be peace without justice emerges forcefully in many communities. But justice can be based on *retribution* (punishment and corrective action for wrongdoings) or on *restoration* (emphasising the construction of relationships between the individuals and communities).

Elements of Retributive Justice: **Retributive justice** is based on the principle that people who have committed human rights violations, or ordered others to do so, should be punished in courts of law or, at a minimum, must publicly confess and ask forgiveness.

Those who uphold this approach contend that punishment is necessary to:

• make perpetrators accountable for their past actions;

• deter future crime;

• counter a culture of impunity; and

• create an environment in which perpetrators and victims can realistically be expected to live next to one another.

Other positive elements of retributive justice, according to its supporters, are:

• avoiding vigilante justice in which victims seek punishment, or justice, from their perpetrators, potentially creating cycles of revenge;

• ensuring that the perpetrators do not rise to power again;

• individualising guilt to ensure that entire communities or groups are not held responsible for crimes; and

• instilling trust in the new legal, justice and political systems, ensuring that people believe in those systems and do not become cynical towards them if perpetrators go unpunished for crimes.

Retributive models of transitional justice suffer from several shortcomings.

• Prosecutions focus primarily on the perpetrator and do not give victims the attention or healing they need.

• Trials can lead to revictimisation, as those giving testimony are cross-examined in a potentially hostile and humiliating proceeding.

• Criminal courts, due to the necessity for clear-cut "yes" or "no" answers, may limit information sharing, making it difficult to obtain the whole truth. Additionally, perpetrators have no incentive to confess, tell the whole truth or make the record public.

• There is no examination of systemic and institutional structures (e.g. secret police, paramilitary units) that allowed or contributed to the crimes.

Retributive justice also includes **restitution**—recovery of losses or compensation to rectify harm. It generally takes the form of a financial payment made to the victim either by the offender or by the state. Both retribution and restitution have symbolic value, as they are concerned with "righting an imbalance."[1]

Elements of Restorative Justice: Restorative justice is a process through which all those affected by an offence—victims, perpetrators and by-standing communities—collectively deal with the consequences. It is a systematic means of addressing wrongdoings that emphasises the healing of wounds and rebuilding of relationships. Restorative justice does not focus on punishment for crimes, but on repairing the damage done and offering restitution.

The goals of restorative justice include:

• resolving the original conflict;

• integrating all affected parties;

• healing the pain of victims through apologies and restitution; and

• preventing future wrongdoing through community-building measures.

Truth telling and the meeting of victims and perpetrators are important in the process, as are expressing remorse and making restitution to the victim and his or her family. In conflict-affected societies in which children have perpetrated violence, a restorative justice approach can be a means of getting children to admit to their actions and to acknowledge their wrongdoing, while providing a means of rehabilitation and return to "normal" life without permanent stigmatisation.

RECONCILIATION

Reconciliation varies in meaning and significance. It can simply mean co-existence or it can mean dialogue, remorse, apology, forgiveness and healing. For each person, reconciliation can begin at a different point in the post conflict transition: at the negotiating table, during the prosecution of perpetrators or with the adoption of a new constitution, for example.

Some Meanings of Reconciliation[2]

- reconstruction of the community, neighbourly relationships, families, etc. which were broken due to pain, distrust and fear.

- construction of a non-racist and non-exclusive ideology, such as a new social consensus out of respect for human rights that is expressed in terms of political changes.

- promotion of intercultural understanding. Among cultures whose co-existence has deteriorated, it promotes mutual understanding, respect and development.

- a moral conversion: a personal change, acceptance of others and acknowledgment of one's own mistakes, crimes, etc.

- restitution of the victim's integrity and a path to the psychosocial rebuilding of experiences of suffering and resistance.

- a way of coming to terms with the past by the victims and those responsible for the atrocities.

An important point about reconciliation is that it is not an attempt to restore things to how they were *before* the conflict, but rather about constructing relationships in a way that allows everyone to move forward together. It is therefore not so much about an end result, such as punishment, but rather about a sequence of processes that build and improve relationships. *National* reconciliation refers to a political form of consensus and interaction among parties and leaders. *Societal* reconciliation refers to the longer-term, more difficult process of community and individual reconciliation.

A 1996 study indicated that the following are necessary for reconciliation to occur:

- "some form of justice;

- community-level confidence-building measures; and

- strategies and mechanisms for dealing with actors who could potentially derail the peace process."[3]

Reconciliation is often seen to be crucial if peace processes are to succeed, as it establishes relations among parties after a conflict and decreases the risk of further violence.

In recent years, in the majority of post conflict states, efforts have been made to implement both justice and reconciliation mechanisms. In general, justice mechanisms have focused on the leaders or key instigators of conflict or repression, while reconciliation mechanisms have been aimed at the lower ranks.

2. WHO IS INVOLVED IN TRANSITIONAL JUSTICE MECHANISMS?

A variety of tribunals, courts, commissions and local conflict-resolution processes exist and are drawn upon in post conflict situations. International, national and local actors are involved.

AT THE INTERNATIONAL LEVEL

The precedent for international tribunals was set when Nazi and Japanese military and political leaders, who committed war crimes during World War II, were tried before international military tribunals in Nuremberg and Tokyo. Under Chapter VII of the UN Charter, the Security Council, in cases of war, has the right to establish international tribunals and appoint international representatives to run them. The International Tribunals for the Former Yugoslavia (**ICTY**) and Rwanda (**ICTR**) were the first such courts to be established since the end of World War II.

In July 2002, the **International Criminal Court (ICC)** became the first permanent mechanism for transitional justice. It will try individuals responsible for international crimes including genocide, war crimes and crimes against humanity. Its power extends to the citizens and territories of governments that have ratified the treaty—90 countries as of May 2004.[4]

International tribunals are important when, at the national level, there is either a lack of capacity or

political will to try suspected war criminals. The tribunals can be held either in-country (as in **Sierra Leone**) or externally. In the case of the ICTY and ICTR, the courts were established outside the countries, as it was felt that holding the trials in-country could exacerbate tensions. The downside, however, is that in both cases, there is little local ownership of the process, and ordinary citizens feel disconnected from the high-level processes that have been taking place outside their countries.[5] As a result, although some key perpetrators have been tried, the courts have not contributed to long-term reconciliation in either **Rwanda** or the **Balkans**. Moreover, international tribunals tend to produce relatively few results for a high financial price. The ICTR in Arusha, Tanzania, has been notoriously slow in trying the major perpetrators of the Rwandan genocide; as of 2004, only fifteen judgments have been handed down since the first trial took place in 1997.[6]

"Mixed" international and national mechanisms are increasingly used to creatively address a country's specific needs and concerns. In **East Timor**, for example, the Special Panels with Exclusive Jurisdiction over Serious Crimes were established in 2000 within the domestic judicial system, but with two international judges and one Timorese judge. The **Iraqi** war crimes tribunal set up in 2004 offers yet another model with Iraqi lawyers and judges using Iraqi and international law to try former officials, but drawing on international (primarily American) expertise and support in preparing the cases and gathering evidence.

Other new transnational justice mechanisms include trials in a third country based on **universal jurisdiction**—a rule that allows national courts of one country to try cases of the most serious crimes, even if they were not committed in that country's territory. For example, **Chilean** dictator General Augusto Pinochet was arrested in London in 1998 on charges of murder, torture and disappearances that were brought forward by a Spanish court.[7]

Women and International Tribunals: International humanitarian law provides equal protection for women and men. The four **Geneva Conventions** of 1949 and their two additional protocols of 1977 also recognise women's special needs (see international policies section below). More recently, as a result of advances at the ICTY:

- sexual violence is now recognised as a "grave breach" of the Fourth Geneva Convention;

- sexual violence, including rape, is a violation of law and customs of war; and

- rape constitutes torture.[8]

In practice, however, gender-based crimes are underrepresented in international tribunals and in national courts.[9] This is, in part, because few women are in leadership positions within these institutions and are rarely consulted during the design of tribunals. According to the **UN Development Fund for Women (UNIFEM)**, of the 14 permanent judges at the international criminal tribunals for the former **Yugoslavia** and **Rwanda,** no more than three at any one time have been women.[10] In addition, there is ample evidence to indicate that the adversarial and public nature of trials and tribunals offers limited protection for women witnesses. At the ICTR, for example, even though rules and procedures addressed witness protection and included specific provisions for women, these were not initially put into operation, and women feared testifying.[11] Even when women are willing to come forward, they are often faced with having to relive their worst experiences without having the opportunity to fully tell their stories.

AT THE NATIONAL LEVEL
National Law: In situations of internal conflict, where the state has been a party to war, the government is often reluctant to try its citizens, but has attempted to do so in several cases. In **Cambodia**, with support from the UN, some Khmer Rouge leaders were put on trial in national tribunals. Post-genocide **Rwandan** courts tried 7,000 individuals between 1997 and 2002, while the state was rebuilding its justice system.[12] The challenges have been immense, including security issues for the protection of witnesses, a shortage of personnel and allegations of one-sided justice. Faced with similar allegations, the Indonesian government succumbed to pressure and is conducting domestic trials for the military, police and government officials accused of human rights violations in **East Timor.**

Women and National Law: Given the collapse of the legal system in many post conflict states, justice mechanisms are most likely to fail women at the

national level. Sentences on rape and sexual violence are often minimal. Evidence is nearly impossible to collect, and in some cases, amnesty is granted. Furthermore, even in peacetime situations, women are often discriminated against by court systems, which apply national laws that are influenced by customary or religious norms and laws. In some countries women are subject to gender-specific laws, detained illegally, publicly humiliated or have their testimony disregarded.

Truth Commissions: Official, temporary investigative bodies, often referred to as **truth commissions,** have been established to clarify the "truth" about atrocities and events that took place during an earlier period of repression or conflict. They are non-judicial bodies that generally produce a report of their findings with conclusions and recommendations for future reform."[13] **Commissions of inquiry** are usually distinguishable from truth commissions because they investigate crimes from a specific event (rather than over a period of time).

The objectives and mandates of truth commissions vary. Key goals in many cases include:

- highlighting the root causes of the conflict and the institutions involved;

- providing accurate documentation of human rights abuses and violations;

- allowing a space for victims to share their stories;

- officially recognising and condemning the wrong-doings; and

- making recommendations to prevent future violence, reform institutions and enhance justice, accountability and respect for human rights.

Some truth commissions have pursued additional activities, including naming perpetrators, granting amnesty or providing reparations. Concerns regarding the effectiveness of truth commissions include the selectiveness of the "truth;" an increase in tensions during the process; additional trauma felt by witnesses during testimony; the reliance on other institutions to implement recommendations; and the dangers of unfulfilled expectations.

The **South African** Truth and Reconciliation Commission (TRC) lasted 10 years. It involved many public hearings across the country, informing communities of the process. Thousands of people came before the TRC to give testimony about their experiences as victims as families of victims, and as perpetrators. It was a public event, broadcast on television and radio. At its conclusion, reports were compiled and presented to the government. From the start, it was agreed that victims would be compensated. In the end, the government agreed to award some compensation, but there is still controversy about the role of reparations in truth commissions.

Approximately 25 truth commissions have been or are being conducted worldwide in countries ranging from Argentina to East Timor, from Sierra Leone to Sri Lanka.[14]

Women and Truth Commissions: In truth commissions, women tend to focus their testimony on their husbands, children and other loved ones, rather than on their own experiences. While some researchers argue that women are exploited by this, as their own stories are overshadowed, new research on the **South African** TRC indicates that in many cases women intentionally came to the TRC to tell the story of their loved ones as a strategy to generate empathy and compassion with members of both sides of the conflict.[15]

Prior to the ICTY and ICTR, sexual violence against women, including rape, was often sidelined. The **Salvadoran** Commission on Truth in 1993 did not include reports of rape at all in its final report because they were seen as outside of its mandate to report on "politically-motivated acts."[16] In **Guatemala,** sexual violence was included in the truth commission report as part of the section on torture.

Sexual violence cases are generally underreported. This is often complicated by the fact that members of government may have been the perpetrators. Women victims face a difficult choice. Disclosure of sexual assault is risky and can result in estrangement from their family, mistreatment of their children and social exclusion. On the other hand, if crimes are not reported, women may be ineligible for reparations or other forms of legal redress.

Access to commissions is another challenge for women. Often those in rural areas have no way to get to cities where commissions are typically held. In

addition, women's testimony is not explicitly sought. In the case of **South Africa,** these issues were addressed in a number of ways. In an attempt to make it easier for women to be heard, a special women's hearing was convened. A range of programs were also introduced.

• Gender training was provided for all the commissioners.

• Preparatory workshops were held, particularly for rural women.

• Gender-sensitive reparations policies were developed (e.g. including compensation for work in the home).

Since then, truth commissions in **Sierra Leone** and **East Timor** have held special sessions for women. East Timor's public hearing, in particular, was extremely comprehensive and gathered victim, witness and expert testimony.

Reparations: Efforts to redress past wrongs through compensation, the restoration of property and rights, guarantees of non-repetition or other forms of restitution for victims are termed **reparations**. They may be directed toward individuals or communities and can include goods, services, money and legal rights such as citizenship or nationality, as well as symbolic gestures such as disclosures of truth, apologies from perpetrators and commemoration of victims. In **Rwanda,** for example, perpetrators have been known to rebuild the homes of genocide survivors. Obstacles to reparations programmes include a lack of resources, challenges in determining the eligibility of victims, and complexities in deciding the most appropriate forms of reparation.

Women and Reparations: In general, reparations policies and procedures can be gender-blind, not recognising the different needs and concerns of men and women. This can leave women without adequate compensation, as was the case in **South Africa**, where the reparations policy was initially formulated without regard for gender (but was later corrected through a special hearing). In **East Timor,** the Gender Affairs Unit of the UN mission convened 500 women in 2000 to recommend policies on a variety of issues, including reparations for women victims of violence during the conflict. Gender-sensitive reparations policies take into account, for example, the impact

on women's lives of the loss of the male breadwinner, the costs of women's unpaid labour in the home and the unquantifiable value of women's care giving functions. Such reparations might include transporting children to school, contributing financially to meet household needs, providing vocational training and assisting with medical care, particularly psychosocial counselling.

To date, there are few examples of reparations programmes for victims of sexual violence. Notably, **Guatemala's** state-proposed reparations programme includes compensation to rape victims, although the overall programme has, to a large extent, not been implemented.

Due to the nature of sexual violence and the many obstacles to obtaining justice for victims, "Realisation of the right to reparation will in many cases be tied to larger questions concerning women's access to social services and other entitlements."[17] In other words, the existence of laws and policies that discriminate against women in all sectors of society can inhibit their access to reparations. Gender-sensitive reparations policies would break down these barriers—that is, they would serve as a catalyst to obtaining equality for women in the legal, political, economic and social spheres of post conflict countries.

Amnesty: Amnesty is a controversial component of some transitional justice mechanisms in which perpetrators are granted freedom from punishment in order to encourage truth-telling and promote social reconciliation. It can take the form of a **general** or **"blanket" amnesty** that covers all crimes committed by a group of individuals or **conditional amnesty** whereby the perpetrators must admit to the crime to be granted immunity from prosecution. It may also apply only to crimes committed during a certain time period.

Generally, the ability to grant amnesty is reserved for a head of state or the parliament. In **South Africa,** the TRC had the power to grant amnesty and in some cases did so in exchange for testimony or information. In this case, strict rules accompanied every application for amnesty, including the right of victims to oppose applications for amnesty, cross-examination of applicants and the potential for future prosecution if the person did not fully

cooperate with the TRC. In addition, individuals that refused to appear before the TRC, and those that did not apply for amnesty directly, faced potential prosecution in national courts.

In the past, amnesties for mass violence have been granted for a number of reasons including:

• demands of political leaders as a condition for negotiations;

• the popular belief that it would contribute to national reconciliation; and

• the inability of a new government to tackle crimes of the past.

Amnesty provisions can, however, create resentment among victims who feel that they received no justice. They can also foster a culture of impunity and lack of respect for the rule of law.

Women and Amnesty: A decision to grant amnesty also has a specific impact on women. The decision not to prosecute sexual violence obstructs justice and opportunities for rehabilitation for the victim. For example, in **Sierra Leone**, it is very difficult for some women to speak about and return to villages governed by the men who raped them.

Granting amnesty also may minimise the issue of sexual violence in the eyes of the population, allowing it to be set aside as an individual act or a private concern. In **South Africa**, crimes of a sexual nature, such as rape, were eligible for amnesty if they were proven to be politically motivated. This can be very difficult for women seeking justice, as the lines between political and personal motivation are blurred and difficult to prove.

Lustration: Sometimes called **vetting**, **lustration** refers to the banning of known human rights violators from holding political office or participating in the new government. It has rarely been used in post conflict situations, but it is sometimes a recommendation of truth commissions. One particular problem associated with lustration is the lack of experienced personnel for many positions in post conflict government.

In **El Salvador**, an Ad Hoc Commission was established as part of the peace accord to review the activities of military officers during the war. Through

its work, and that of the truth commission, 102 officers were "retired" due to human rights violations perpetrated during the conflict.[18] In **Serbia**, a lustration law was passed in May 2003 stating that the records of public officials would be examined to see if they had violated human rights; if found guilty, they would be removed from any current office they held and could be banned from running for public office for the following five years.[19]

Institutional Reform and Capacity Building: This consists of judicial, legal, police, penal and military reform that promotes the rule of law and an end to human rights violations and systematic discrimination. In **South Africa,** the entire military, intelligence, police and legal system underwent massive changes in the early 1990s with the end of apartheid. In **Iraq,** the Working Group on Transitional Justice, composed of Iraqi expatriates, developed recommendations for transitional justice mechanisms following the ousting of Saddam Hussein in 2003. Their work included an analysis of the Iraqi legal code to identify provisions that violate basic human rights.[20]

AT THE LOCAL LEVEL

Traditional Systems: Traditional justice mechanisms are increasingly used in some countries as complementary or alternative processes to international or national systems. Traditional justice procedures tend to take place at the community level and involve religious leaders, elders, local officials or other respected community members. These initiatives may lessen the burden on the formal system, offer familiarity and legitimacy to the population and contribute to reconciliation and reconstruction.

Traditional justice mechanisms face three central challenges:

1. how to standardise values, norms and processes throughout a country;

2. how to ensure victims do not feel that justice has been compromised; and

3. how to avoid overburdening the community with the large and difficult task of administering justice.

In **Rwanda,** the *gacaca* "court," a traditional system of community-based conflict resolution and justice,

is being adapted to oversee the "trials" of the overwhelmingly large numbers of perpetrators of the 1994 genocide. It has already encountered various obstacles, however, and at the time of publication was under national review. In **East Timor**, the Community Reconciliation Process was established to complement the work of the Special Panels by addressing lesser crimes at the local level. Immunity from prosecution is granted when the perpetrator has admitted guilt, and victims and community members have determined appropriate actions for restitution.

In some instances, community members can initiate traditional mechanisms. For example in **Sierra Leone**, women in communities conduct healing rituals for child ex-combatants. By ritually cleansing them of their past deeds (killings, maiming, raiding), they enable the children to return and be accepted into a community (see chapter on children's security).

Women and Traditional Forms of Justice: It is difficult to generalise about traditional justice because it varies by region, country and even community. Some general trends can be identified, however, that affect women.

• Women tend to be absent as decision-makers, judges, or prosecutors.

• Gender-based violence is often not recognised as a crime and thus is not addressed.

• For a variety of reasons (including social pressure and the fear of bringing shame), women are often reluctant to come forward and make accusations of rape or other forms of sexual assault.

The post conflict environment does at times provide a window of opportunity for women. In **Rwanda**, for example, women were not traditionally permitted to be judges in *gacaca* courts. But as the system was re-established to deal with genocide crimes, 35 percent of judges elected were women. [21]

THE ROLE OF CIVIL SOCIETY
Because transitional justice is about healing and establishing relations between people within a state, justice and reconciliation processes are dependent upon the active participation and input of civil society to make them truly effective.

Citizens are often the first to demand such initiatives. In **Taiwan** and **Korea,** women's rights NGOs, rather than political dissidents, have led the fight to bring justice for former "comfort women" who served as sexual slaves to Japanese soldiers during World War II. [22]

Civil society groups also play a key role in implementing justice mechanisms. They can offer expertise and input in the design phase, gather information for proceedings and raise awareness throughout the population. In **South Africa**, representatives of NGOs were intimately involved in the design and implementation of the TRC. In **Chile**, religious organisations collected numerous judicial transcripts about disappearances under Pinochet that were crucial for the work of the National Commission for Truth and Reconciliation. In **East Timor**, reconciliation proceedings involved churches, local governments, local chiefs and commissioners who ran the processes, but also depended upon hundreds of community members who came to watch and participate in proceedings. [23]

Lastly, civil society groups lead reconciliation efforts. Often local populations create organisations to support victims of war, provide trauma counselling and promote healing, forgiveness and reconciliation at the community level. In **Guatemala**, for example, in addition to making submissions to the formal transitional justice procedures, many citizens also wanted to share experiences with communities with whom they were in conflict or distanced from because of the war. These informal processes led to joint initiatives, ceremonies and programs for collective healing; in one case, 28 communities organised to build a cross on top of a mountain to mark the graves of 916 people from the community. [24]

3. HOW DO WOMEN CONTRIBUTE TO TRANSITIONAL JUSTICE?

Although there has been little documentation of women's contributions to transitional justice, it is clear that they have a positive impact in a number of ways.

WOMEN AS PLANNERS AND DESIGNERS
On an international level, over 300 organisations supported the work of the Women's Caucus for Gender Justice during the design of the International Criminal Court and its statutes. Their presence and

advocacy led to several advances in international law on issues of transitional justice and women including:

- guaranteed witness protection, support and counselling through the establishment of a Victim and Witnesses Unit;

- a mandate that judges have expertise on specific issues, including violence against women;

- a requirement of fair representation of men and women among judges; and

- a more far-reaching condition whereby states that ratify the Statute "amend their national law and adopt new legislation, if necessary, to ensure conformity with the Statute's provisions."[25]

In the design of the ICTY, women judges drafted rules of procedure, requiring not only a higher level of sensitivity to gender issues but also better witness protection and rules for evidence than found previously in international processes.

At the national level, in **Sierra Leone**, women's participation in the design of the truth commission ensured the existence of a special unit to investigate war crimes from a gender perspective. There is a Women's Task Force, made up of members from women's associations, UN agencies, the police force, the media and the legal profession, that works to create an atmosphere in which women can participate in both institutions. The Task Force is credited with addressing the need for gender balance and sensitivity within the truth commission.

In **East Timor's** Commission for Reception, Truth and Reconciliation, women's groups have been involved in public dialogues regarding the various options for transitional justice, the decision to establish a truth commission and as members of the steering committee that is formulating the commission. In particular, the two female commissioners (of seven total) have been at the forefront in ensuring that women's issues are included throughout the process.

In **South Africa**, women participated in workshops and conferences to discuss transitional justice options and conducted education and awareness-raising activities regarding the transition. Women were thoroughly involved in the creation and design of the

TRC and made valuable contributions in promoting public hearings and participating at the community level. At the outset, the TRC was not designed to address issues and crimes specific to women. This was later changed, and a special session on gender was held.

Lastly, in the design of **Rwanda's** transitional justice mechanisms, women parliamentarians played a vital role in moving rape from a "category four," low-level offence to the most serious "category one" level, which require a trial by the ICTR or the national courts. However, because of the overwhelming number of such crimes, there is concern now that many rape perpetrators may never be tried.

WOMEN AS JUDGES AND COMMISSIONERS

In some cases, women serve as judges on tribunals and courts. In February 2003, seven of the eighteen judges elected to the International Criminal Court were women, a milestone in terms of the number of women serving on any international tribunal.[26] Five of the fifteen commissioners in **South Africa's** Truth and Reconciliation Commission were women.[27] It is interesting to note, however, that women were assigned primarily to the Reparations and Rehabilitation Committee, which essentially had only an advisory role. Of the 25 truth commissions conducted worldwide, two have been chaired by women: the UN International Commission of Inquiry for **East Timor** and the **Sri Lankan** Commission on the Western and Southern Provinces. As of 2004, women participated in and presided over *gacaca* proceedings, and a woman chaired the Department of Gacaca Jurisdictions in **Rwanda**.

As judges, women are in a position to affect change for women and contribute a new perspective to cases in general. For example, in every ICTY case resulting in significant redress of sex crimes (perpetrated against women *and* men), women judges were on the bench.[28]

WOMEN AS WITNESSES

Women are also important witnesses, providing information about crimes committed against them and family members to truth commissions and courts. In **South Africa's** TRC, 52.9 percent of witnesses (11,271 out of 21,297) were women.[29] It was accepted that mothers could speak and cry on behalf of their children, whereas men were not as comfortable showing emotions publicly.[30]

Women who testify often do so at great personal risk. In the ICTY, many **Bosnian** women who were raped were afraid to testify out of fear that they would never be able to marry, that they would be shamed by society or that their attackers might seek revenge. After demanding protection before, during and after the trial, some women did come forward despite the risks.[31]

When women do come forward—they were 21 percent of witnesses at the ICTY—they provide critical testimony on a range of crimes. In the words of an ICTY investigator, "Women often heard and saw things that men did not, including mass murder and rape."[32]

WOMEN AS PERPETRATORS

While women are often victims of war crimes, they also have been perpetrators, though generally on a far lesser scale than men. In **Rwanda**, approximately 3,000 women (out of more than 100,000 people accused nationwide) are awaiting or have been tried as perpetrators of genocide.[33] In many cases, women participated in lesser crimes and were bystanders, witnesses, accomplices or agitators.

WOMEN AS CIVIL SOCIETY ADVOCATES

As noted above, women have organised through civil society to participate in transitional justice processes.

Where no transitional justice mechanism has existed, women advocates have often organised and advocated for their creation. Asian women and human rights organisations, after a decade of advocacy and awareness raising, organised an international "people's tribunal"—without legal standing but with strong symbolic implications—to try **Japanese** military leaders for acts of rape, torture and slavery against so-called "comfort women" in the 1940s. The Women's International War Crimes Tribunal ruled in December 2001 in The Hague that Japanese generals were guilty of crimes against humanity.[34] Although not binding, this verdict raised awareness and set precedents; for example, the Canadian Bar Association publicly and officially acknowledged the judgment of the tribunal and urged the Canadian government to do the same.[35]

At the ICTY, the significant advances in international law were a direct result of successful lobbying by international women's groups and **Bosnian** women's organisations. According to a 2004 study, chief prosecutor Richard Goldstone claims "that if women had not been involved with the tribunal in its early years, there might not have been any indictments for gender-based crimes."[36]

In **South Africa**, a study titled "TRC and Gender," produced in 1996, documented 33 years of repression of women's perspectives throughout truth commissions.[37] This report is seen as one of the most successful civil society lobbying efforts to influence the TRC. It resulted in:

• the inclusion of gender-based and sexual violence in the definition of gross human rights violations;

• changes to the statement protocol to inform women of the importance of relating incidences during which they themselves were the victims; and

• the addition of special women-only hearings.

In **Peru**, women's organisations advocated for a focus on women and gender-based crimes in the truth commission. The Truth and Reconciliation Commission of Peru sponsored a programme that "developed training documents and communication strategies, circulated suggestions for investigators and guidelines for interviewers, ran workshops, produced educational documents for the public, and created a gender working group…These initiatives encouraged integration of gender throughout the commission in a multitrack approach that mainstreamed gender while also treating it as a specific focus area."[38]

In **Rwanda**, ProFemmes/Twese Hamwe, a collective of 40 women's NGOs throughout the country, conducts a variety of projects to maximise women's participation in *gacaca*. These include advocacy for the integration of a gender perspective in implementation of the *gacaca* law and awareness-raising sessions for 100,000 women leaders, local government representatives and persons in detention centres.[39]

In addition to these efforts, women in civil society are working to ensure access to justice within their countries, as well. In **Cambodia**, a network of 62 women's organisations has worked with the women's ministry to draft a domestic violence law that remains in limbo before the National Assembly.[40] UNIFEM writes: "…without laws that adequately protect them from domestic violence, rape, and other

gender-based violence, women cannot seek justice or compensation…"[41]

WOMEN AS BRIDGES TO LOCAL COMMUNITIES

Women often play an important role in transitional justice at the local level as links between official processes and communities. In **Bosnia and Herzegovina**, "local women's groups were particularly active in counselling and materially supporting survivors of wartime abuses. Because they had already forged relationships with victims and survivors, members of these groups were in the position to serve as witnesses. Investigators…spoke of Bosnian women's groups as important 'communication links' between The Hague and Bosnian people and, in many cases, as 'partners' in the investigation process."[42]

Women in communities also facilitate reconciliation at the local level. As individuals, women are disproportionately represented among the social workers, nurses and teachers who assist former fighters in their return to civilian life. Through women's organisations, they offer services to bring conflicting sides together informally to rebuild society. In **El Salvador**, women have conducted psychosocial programmes for the population because formal processes did not address that need. In **Rwanda**, women—through an initiative led by a woman—have adopted children orphaned during the genocide, regardless of ethnicity, as a mechanism for reconciliation and moving society forward.

Women have also crossed the former conflict divide in order to promote reconciliation between communities of women. In **Bosnia and Herzegovina**, for example, a group of women from Srebenica formed Bosfam to provide support to women refugees and returnees, many of them widows. These Serb and Muslim women jointly knit sweaters for displaced Serbian children.[43]

4. WHAT INTERNATIONAL POLICIES EXIST?

International Humanitarian Law (IHL) protects civilians during times of armed conflict (see chapter on human rights). Protection under IHL is enshrined in the four **Geneva Conventions** of 1949 and the two

Additional Protocols issued in 1977. It applies to women and men equally, but affords women some special protection due to their unique circumstances. For instance, it states that women:

• must have separate sleeping and sanitary quarters from men if detained;

• must be granted special protection if pregnant or nursing; and

• are protected against attack, particularly rape, enforced prostitution or any other form of indecent assault.[44]

In post conflict situations, **International Human Rights Law (IHRL)** is also an important tool, for which the foundation was outlined in the **Universal Declaration of Human Rights** of 1948.

In recent years, IHL and IHRL have been further developed to define violations against women as more serious crimes. In the **International Criminal Tribunal for the Former Yugoslavia**, rape was defined in Article 5 of the statute as a "crime against humanity." The Tribunal, in practice, also prosecuted sexual violence under other articles of the statute, including as a "grave breach" or "violation of the customs and laws of war."[45] Furthermore, the **International Criminal Tribunal for Rwanda** ruled that sexual violence is a component of genocide.

Particularly relevant for transitional justice, the **Joinet Principles** were issued in 1997 by Special Rapporteur on Impunity, Louis Joinet and the Sub-Commission for the Prevention and Protection of Minorities of the UN Commission on Human Rights. It outlines victims' rights in terms of past human rights violations, including:

• the right to know the truth;

• the right to justice; and

• the right to reparation.[46]

Since rape and other sexual crimes have been prosecuted as war crimes under the tribunals in **Rwanda** and the former **Yugoslavia**, a precedent has been established that, when combined with the Joinet Principles, further protects women's right to access to justice and reparations for sexual crimes.

UN Security Council Resolution 1325 "emphasises the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard, *stresses* the need to exclude these crimes, where feasible from amnesty provisions…"[47]

Most recently, entering into effect in July 2002, the **Rome Statute of the International Criminal Court (ICC)** considers sexual violence a "war crime;"[48] it acknowledges that "rape is an act of torture, an act of genocide, a war crime, a crime against humanity."[49] It further declares sexual slavery, enforced prostitution, forced pregnancy, forced sterilisation and any other form of sexual violence to be grave violations of the Geneva Conventions and war crimes when conducted in international or internal conflicts.

Finally, in reference to these recent standards, UNIFEM notes: "In attempting to set new national standards for their protection, women can look to international conventions and customary laws, the jurisprudence of the ICTY and ICTR, and the ICC statute, and demand that these precedents be used during national trials."[50]

5. TAKING STRATEGIC ACTION: WHAT CAN WOMEN PEACEBUILDERS DO?

1. Advocate for women's participation in transitional justice mechanisms at international, national and local levels.

2. Connect with international women's gender justice organisations for resources, tools, models, lessons learned and information on international law.

3. Ensure that women are directly involved in the design and establishment of transitional justice mechanisms so that women are represented in their structures and a gender perspective and women's concerns are reflected in their mandates.
   • With other women's groups, strategise to determine how women's needs can best be addressed in transitional justice mechanisms, whether through women-specific components (such as a special hearing) or integrated throughout the program.

• Provide materials and workshops for judges, prosecutors, advocates, commissioners and other leaders to raise awareness of women's issues and concerns with regard to transitional justice and about the lessons learned in other cases and models.

• Engage with the media to disseminate information.

4. Inform the public of the importance of transitional justice to society and of the critical role of women in these processes.
   • Conduct awareness-raising events and call for open hearings to ensure that the public is informed and can engage with the transitional justice process and to ensure that expectations regarding its outcomes are appropriate.
   • Encourage dialogue and public debate on core issues of transitional justice, including amnesty and reparations.

5. Actively participate in transitional justice mechanisms. Engage directly with the process.
   • Gather and disseminate information.
   • Provide testimony, and include direct experiences as well as those of friends and family members.
   • Develop victim support and empowerment measures.

6. Continue participation in transitional justice mechanisms even after an official process concludes.
   • Evaluate its impact.
   • Shift focus to institutional reform of the transitional government agencies.
   • Track implementation of promises, recommendations and progress.
   • Advocate for the adoption of international conventions and customary laws on the prosecution of sexual violence as precedents to be used during national trials.

7. Consider how to supplement the short-term official transitional justice mechanisms with other long-term forms of reconciliation and rehabilitation (i.e. psychosocial counselling, community healing, etc.).

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ACRONYMS

ICC	International Criminal Court
ICTY	International Criminal Tribunal for the Former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
IHL	International Humanitarian Law
IHRL	International Human Rights Law
TRC	Truth and Reconciliation Commission
UN	United Nations
UNIFEM	United Nations Development Fund for Women

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Constitutional Rights and Legislation

JOLYNN SHOEMAKER

In a society recovering from violent conflict or one transitioning from an authoritarian regime, the creation of a new constitution and legislative framework is a key step toward a democratic governing structure. The constitution and legislation are the foundations of the rule of law. The **Rule of law** means that the same constitution and set of laws govern and protect everyone (see chapter on democracy and governance). In the last several decades, countries around the world have created new constitutions, established new governing institutions and enacted new legislation as part of the process of peacebuilding and democratic transformation. More than half of all the written constitutions in the world have been drafted since 1974.[1]

Transition periods offer brief windows of opportunity to review and redraft constitutions and laws. The manner in which this is done, the principles that are embraced and how the legal structure is enforced have long-term repercussions for peace, security and democratic development. They can also have significant effects on the social, political and economic status of different sectors of society (e.g. ethnic, racial and religious groups), including women. This chapter is divided into two sections, highlighting the major elements of constitutional reform and legislative creation with a specific focus on the challenges and opportunities for women in societies emerging from conflict.

1. WHAT IS A CONSTITUTION?

The **constitution** provides the overarching legal framework for a country. It is the highest form of legal authority in a state, and no other laws enacted by the government can contradict it. Constitutions are usually, but not always, written documents. The constitution contains the fundamental principles of government and enshrines the basic rights of individuals in relation to the state. It also establishes the basis for political and judicial systems.

Constitutions vary widely in structure and substance. There is no single model for achieving the perfect document for a democratic foundation. However, the constitution should embody core values, including fundamental freedoms, human rights and a separation of powers within the government. The Constitution should be **gender sensitive**—it should include the rule of law, gender equality and the human dignity of every citizen.[2]

2. WHO DRAFTS A CONSTITUTION?

In the past, constitutional drafting processes were usually closed to the public and conducted almost entirely by elites. However, there is a growing trend to expand participation in these processes with increasing involvement of civil society groups.

THE PARTICIPATORY APPROACH

The recent participatory approach to constitution creation is based on international legal instruments and decisions that emphasise the right of democratic participation. For example, the **Universal Declaration of Human Rights** (Article 21) and the **International Covenant on Civil and Political Rights** (**ICCPR**) (Article 25) provide for the right of democratic participation. In addition, the **United Nations** (**UN**) **Commission on Human Rights** has articulated the specific right to participate in constitution making.[3]

Various mechanisms can be used for the constitutional drafting process. They include, but are not limited to

roundtable meetings, independent constitutional commissions, legislative commissions, national conventions and public referenda. Some of these mechanisms provide less opportunity for broad participation than others (e.g. entrusting the drafting and approval process to the legislature or a commission of the legislature does not involve the public directly). Public referenda offer a more direct approach, but the public can only vote on the proposals that have already been put forward and have limited ability to influence what is included in the final document.

Alternative approaches such as special, independent commissions and assemblies with public input throughout the process can increase the level of public participation and build public support for the final document. Such bodies can be appointed or elected or a combination, and more than one may be established to handle each phase of constitution making. In **Afghanistan**, a constitution-drafting commission was first appointed to prepare a preliminary draft, followed by a constitution review commission that engaged with the public for suggestions. Finally, a Constitutional Loya Jirga was convened by a combination of presidential appointments and direct elections to adopt the final document.[4] In **Uganda**, a commission was appointed based on merit to consult with the public and draft the constitution. A constituent assembly was then elected, representing various interest groups (including women), to discuss and approve the final document.[5]

Whatever method is chosen, it is essential for it to be fully representative of the social groups and political interests within society. No party or interest should have a dominant voice. Women should be represented in bodies formed for constitution making and approval. In **East Timor**, at least 40 percent of the constitutional commissioners were women.[6] In **Afghanistan**, women were represented on both commissions (although not in equal numbers with men), and the mechanism for selecting the Loya Jirga included a minimum of 20 percent seats for women.[7] In **Zimbabwe**, the process failed because it was not inclusive. The appointed constitutional commission was controlled by one party and did not adequately include women. When the constitution was voted on by referendum, the public rejected it.[8]

The process for creating the constitution should include at least three steps: civic education, public consultations and drafting.

• **Civic education** is an essential first step. The goal is to increase public understanding of the drafting process and the importance of the constitution in a democracy. This process can also help identify the issues of concern for local populations and various interest groups. Special initiatives can be implemented to reach out to rural and urban areas, utilising a variety of media. In **Eritrea**, this was done through songs, poems, stories, radio and local theatre in various languages.[9] These could include efforts to improve the education of women regarding the constitution.

• During public consultations, the drafters could present specific questions and issues to the public to solicit views.[10] The drafters could meet with representatives from various civil society groups, including women, to develop the central principles of the document. In **Nicaragua**, this was done by distributing drafts, televising debates and holding town-hall open forums.[11] In **Rwanda**, consultations were held throughout the provinces. Consultations should continue throughout the drafting process to ensure that there is transparency and that suggestions are incorporated. The consultations should not be rushed—sufficient time is needed to develop a constitution that is supported and understood by the public.

• Constitution drafters should not assume that women's views or rights would be included without special measures, such as separate meetings with women or other mechanisms to support their participation. In **East Timor**, a working group was formed on women and the constitution, which organised consultations around the country.[12] In **Rwanda**, a women's committee conducted training, awareness and sensitivity programmes on the constitution around the country.[13]

WOMEN'S CONTRIBUTIONS TO CONSTITUTION MAKING

The participatory approach to constitution making has created new opportunities for women to make a direct contribution to the process and to influence the text. Women have been instrumental in demanding a

more participatory approach and in utilising openings for public input to press for their concerns. In **Nicaragua**, women were vocal in their opposition to the first draft of the constitution because it did not specify equal rights for women and men. Nicaraguan women insisted that such language be included in the final draft.[14] In **Uganda,** women spoke out as members of the constitutional commission and the constituent assembly and through their involvement in NGOs.[15] In **Cambodia**, civil society played a pivotal role in making the constitution through public meetings and demonstrations, and women were the driving force behind this civil society movement. Women discussed their suggestions for the constitution, organised workshops and meetings, participated in public demonstrations and worked with legislators to get their recommended language into the document.[16]

International and regional institutions have provided support for various programmes that involve women in the constitutional process. In **Afghanistan**, the UN Development Programme (UNDP) and the UN Assistance Mission to Afghanistan (UNAMA) worked to support the development of Afghanistan's Constitution and to involve the broad participation of women through such methods as consultations with women's civil society organisations.[17] In **Rwanda**, the UN Development Fund for Women (UNIFEM) provided funding to the Legal and Constitutional Commission to mobilise, educate and involve women in the process of drafting the new constitution and helped increase the percentage of women at the national convention to review the draft constitution.[18] In **Rwanda** the Inter-Parliamentary Union (IPU) provided technical and financial support to facilitate a dialogue among women's groups and parliamentary members on how to incorporate gender considerations into the constitution.[19]

Where women have played a significant role, the resulting constitutions have incorporated language on gender equality and women's rights. In **South Africa**, women's and other civil society groups had access to the process, and equal rights and non-discrimination are reflected in the final document.[20] In **Uganda,** women participated in the constitution process, and the final constitution included strong language on the promotion and protection of women's rights.[21] In **East Timor**, as a result of women's participation in the process, non-discrimination on the grounds of gender is one of the fundamental objectives of the state.[22]

3. WHAT ARE THE CORE COMPONENTS OF THE CONSTITUTION?

Just as processes for creating constitutions vary from case to case, so do the structures and texts of constitutions. Constitutional documents usually include the following basic elements: preamble; fundamental rights and freedoms; division of powers to prevent the concentration of power in one branch of government; structure of government institutions (executive, legislative and judicial); and the political system (presidential or parliamentary).

One of the preliminary considerations when drafting a constitution is the level of detail to be included. The level of detail directly corresponds to the degree of flexibility for interpretation and change. The constitution is a document that must have some capacity to evolve as time passes. However, because it embodies core principles of the state and fundamental rights of the individual, it should not be too easy to modify or reinterpret. A more detailed document provides more stability and leaves less room for differing interpretations. The drafters need to determine how much detail to include, how much flexibility to allow for interpretation and how to define requirements for changing it in the future.

INTERIM CONSTITUTIONS

In many countries transitioning to democratic rule, an **interim constitution** may be a necessary step. Interim constitutions vary in length and depth. At minimum, it should describe the structure of the government, its powers and responsibilities, the fundamental rights of individuals and the procedures for creating a permanent government. In **Rwanda, Ethiopia, Eritrea, Cambodia, South Africa**, and, more recently, **Afghanistan** and **Iraq**, interim constitutions and arrangements were created in the transition period leading up to democratic elections.

The **South Africa** interim constitution included all the basic principles that went into the final version. It specified that the Constitution was the supreme law of the country and included chapters on citizenship,

fundamental rights (including equality), branches of government, the process for adopting the final constitution, law enforcement and defence and transitional arrangements. It was so comprehensive that there were few changes in the final version.

In March 2004, **Iraq** adopted an interim constitution called the Transitional Administrative Law. It briefly details the phases and deadlines of the transitional period, specifies that the interim constitution is the supreme law of Iraq, describes the system of government and defines the official religion as Islam. It also outlines fundamental rights (including equal rights and non-discrimination) and the structure of the transitional government. The document is not as detailed as the South African interim constitution and leaves ambiguities in many areas. These ambiguities leave it open for change and reinterpretation before the permanent constitution is finalised.

INDIVIDUAL RIGHTS

The constitution should guarantee fundamental rights and freedoms of individuals, both men and women. Civil, political, social and economic rights are embodied in international human rights instruments, particularly the **Universal Declaration of Human Rights** (see appendix for full text). The Declaration was created as a non-binding instrument, but it is not a treaty. Generally, binding instruments refer to international agreements, both bilateral and multilateral, signed and ratified by individual states. The **International Covenant on Civil and Political Rights (ICCPR)**, the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, and the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** are binding on signatory states. Although the Universal Declaration of Human Rights is not a treaty, through general practice and a sense of obligation among states it has become customary international law.[23]

Constitution drafters can draw specific language from each of these instruments for inclusion in their constitution. For civil and political rights, these include, but are not limited to, dignity, equality and non-discrimination; bodily integrity and security; fundamental freedoms; political participation; residency, citizenship, nationality, detention and criminal trial.[24] Examples of how various constitutions have incorporated these rights are included below.

Human dignity refers to the respect each person deserves as a member of the human race.

- The **Universal Declaration of Human Rights**, Article 1: "All human beings are born free and equal in dignity and rights."

- The Constitution of **Rwanda**, Article 12, articulates the rights of human dignity and personal freedom.

- The Constitution of **Afghanistan**, Article 24, defines liberty and dignity as inviolable rights.

Equality and non-discrimination refers to equal treatment under the law.

- **The Universal Declaration of Human Rights**, Article 2: "Everyone is entitled to all rights and freedoms set forth in this declaration, without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

- Article 7 of the **Universal Declaration** stipulates the right of equal treatment and protection of the law.

- **ICCPR**, Article 26, guarantees equal protection before the law and prohibits discrimination.

- The **Namibian** Constitution, Article 10: "All persons shall be equal before the law. No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status."

- The **Cambodian** Constitution, Article 31: "Every Khmer citizen is equal before the law." Article 45: "All forms of discrimination against women are abolished."

- The **South African** Constitution, Section 9, includes a broad explanation of equality before the law, equal protection and non-discrimination. This section also provides for affirmative action to "protect or advance persons, or categories of persons, disadvantaged by unfair discrimination."

- The **Indian** Constitution, Article 15, prohibits discrimination on the grounds of religion, race, caste, sex or place of birth.

- The Constitution of **Bangladesh**, Article 28: "Women shall have equal rights with men in all spheres of the State and of public life."

Bodily integrity and security means that every person has the right to feel secure and to be free from mistreatment and abuse.

- **The Universal Declaration of Human Rights**, Article 3: "Everyone has the right to life, liberty and security of person."

- **ICCPR** Articles 7–10 prohibit torture and cruel, inhuman or degrading treatment or punishment and slavery and delineate the rights of liberty, security and dignity. Article 4 prohibits slavery and Article 5 prohibits torture and cruel, inhuman or degrading treatment or punishment.

- The **South African** Constitution, Sections 11–13, articulates the right to life, freedom and security of person and prohibits slavery, servitude and forced labor.

Political participation refers to the right to actively engage in the civic and political affairs in a country.

- The **Universal Declaration of Human Rights**, Article 21, articulates the right to participate in government, equal access to public service and periodic and genuine elections.

- **ICCPR**, Article 1, delineates the right of self-determination. Article 25 articulates the right to take part in public affairs, to vote and be elected in elections and to have equal access to public service.

- The **Eritrean** Constitution, Article 7: "It is a fundamental principle of the State to guarantee its citizens broad and active participation in all political, economic, social and cultural life of the country. Any act that violates the human rights of women or limits or otherwise thwarts their role and participation is prohibited."

- The interim constitution in **Iraq** sets a target of 25 percent participation by women in the national assembly.[25]

Residence, citizenship and nationality rights mean that every person has the ability to live in a place of his or her choosing and to claim certain rights as a resident, citizen or national.

- The **Universal Declaration of Human Rights**, Article 15, guarantees the right of nationality.

- The **Cambodian** Constitution, Article 33, protects against deprivation of nationality.

- The **South African** Constitution, Article 3, outlines equal rights to citizenship and its benefits.

- **Due process** refers to the right to equal treatment under the law and to fair judicial procedures.

- The **Universal Declaration of Human Rights**, Article 9, prohibits arbitrary arrest, detention or exile. Articles 10–11 stipulate the right to a fair and public trial and the presumption of innocence until proven guilty.

- **ICCPR**, Articles 14–15, cover rights in the determination of criminal charges.

- The Constitution of **Fiji**, Sections 26–29, detail freedom from unreasonable searches and seizure, rights of arrested or detained persons, rights of charged persons and access to courts and tribunals.

- The Constitution of **Slovakia**, Articles 46–50, include the right to an independent and impartial court hearing, right to refuse to testify and rights in a criminal trial.

- The Constitution of **Bangladesh**, Article 33, articulates rights pertaining to arrest and detention, and Article 35 covers rights pertaining to trial and punishment.

Additional fundamental rights and freedoms in international human rights law include those listed below:

- The **Universal Declaration of Human Rights** stipulates the right to privacy (Article 12), freedom of movement and residence (Article 13), marriage (Article 16), property ownership (Article 17), freedom of thought, conscience, and religion (Article 18), freedom of expression (Article 19) and freedom of assembly and association (Article 20).

- **ICCPR** articulates freedom of movement (Article 12); privacy (Article 16); freedom of thought, conscience and religion (Article 18); freedom of expression (Article 19); peaceful assembly (Article 21); association (Article 22); and marriage and family (Article 23).

- These rights are articulated in constitutions in **South Africa, Rwanda, Fiji, Cambodia** and other recent constitutions.

Economic, labour, social and cultural rights include many other rights outside of the political sphere that impact work, family and community life.

- The **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, Article 3, obligates states to "ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant."

- Articles 6–11 recognise labour rights, including the right to work, the right to favourable conditions of work and the right to form and join trade unions.

- Article 10 recognises the protection and assistance to the family, including maternity benefits.

- Articles 11–13 recognise the right to adequate standard of living, physical and mental health and education.

- The **Cambodian** Constitution, Article 45, protects women from losing jobs due to pregnancy and provides for the right of maternity leave without loss of benefits. The article creates an obligation for the government and society to create opportunities for women to receive employment, medical care, education for children and decent living conditions.

- The Constitution of **Slovakia**, Part 5, guarantees the right to a choice of profession and training, equitable and adequate working conditions, health, education, marriage and family.

- The Constitution of **Afghanistan**, Article 44: "The state shall devise and implement effective programmes for balancing and promoting education for Minority Rights."

MINORITY RIGHTS

For minority groups, guarantees of non-discrimination, equality and other individual rights may not provide sufficient protections. In a governing system where the majority rules, there is a danger of "tyranny of the majority," when the majority ignores the rights of the minority. In order to avoid this scenario, it is important for the constitution to address the rights of minorities. In a constitutional democracy, the majority rules, but the majority should be constrained by protection for minorities.[26]

In religious states, marginalisation of religious minorities can be a problem. Religious states include **Israel** (Jewish), **Nepal** (Hindu), I**ran, Pakistan, Saudi Arabia, Malaysia, Sudan** and **Afghanistan** (Islamic).[27] A religious state can be a democracy. However, it is a unique challenge to ensure non-discrimination and full participation by minority religious groups in this type of state.

The constitution can provide mechanisms for minority participation and protection of minority interests. Some constitutions include specific provisions that recognise various languages, cultures and religions. The **South African** Constitution has a section on languages (Section 6) that establishes a language board to promote and facilitate the development and use of different languages. The Constitution of **Belgium** recognises linguistic regions (Article 4) and linguistic groups (Article 43). The constitution may also include provisions that recognize cultural, religious and linguistic rights for various communities. Section 31 of the **South African** Constitution protects the right to enjoy culture, religion and language, insofar as these activities do not violate the Bill of Rights. The Constitution of **India** gives minorities the right to conserve distinct spoken and written language and culture (Article 29). The Indian constitution also provides minorities with the right to establish and administer educational institutions (Article 30).

There are ways to structure parliamentary representation to promote minority participation in the government. The constitution can include special procedures, institutional arrangements and legislative and administrative processes that promote the participation of certain groups, such as minorities and women. Plurality and majority systems generally do not help to elect minorities, except where the minorities are concentrated. Proportional representation is a more favourable system to encourage participation by minorities and women. In some countries, such as **Nepal**, political parties are required to nominate a certain number of minorities.[28] Some countries set aside seats for minority representation; in Slovenia, two seats are reserved for minorities in the parliament.[29] The constitution should explain the procedures for electing parliamentarians, including special procedures to ensure that minorities and women are adequately represented (see chapter on democracy and governance).

In addition, arrangements for power sharing can be devised to facilitate minority participation and to limit conflicts between minority groups and the central government. A federal system in which power is shared between a central government and subordinate provincial and regional governments is one way to structure power sharing and can be articulated in the constitution (see chapter on democracy and governance).[30]

In some types of decentralised systems, ethnic or other types of groups are considered political entities with autonomy over certain issues, while common issues are handled at the national level.[31] Federalism includes the following elements: shared executive power among groups; autonomy within each group; proportional representation; and a minority veto on specific issues. Countries as diverse as **Belgium, South Africa, Zimbabwe, India, the Netherlands, Austria, Switzerland, Cyprus, Lebanon** and **Northern Ireland** have established these types of systems.[32] It is important that power-sharing arrangements are explained in the constitution. For example, in the **South African** Constitution, the composition, election, procedures and powers of the National Assembly, the provinces and the local municipalities are described in detail.

WOMEN'S RIGHTS

A constitution's language should reflect equal rights for men and women. Inclusion of this principle throughout the constitution is sometimes referred to as "engendering the constitution."[33] Women should advocate for the inclusion of fundamental rights and freedoms based on international law. Language from international legal instruments, including the Universal Declaration on Human Rights, the ICCPR, the ICESCR and CEDAW, as well as other recent constitutions, can be used as a basis for women to argue for the inclusion of these rights.

The constitution may also provide for affirmative action for women and disadvantaged groups. The **Ugandan** Constitution, Article 33, provides that "women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom." The **Indian** Constitution, Article 15, and the **Bangladeshi** Constitution, Article 28, allow specifically for affirmative action for women. The **South African** Constitution, Section 9, provides that "legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken."

INCORPORATING INTERNATIONAL LAW INTO THE CONSTITUTION

The constitution should explain how international law relates to the country's legal system. In some cases, the incorporation is not automatic: When the government signs a treaty, the legislature must pass a law incorporating the treaty into the law. In other states, the treaty automatically becomes part of the country's laws, a process referred to as "self-executing." Recent constitutions reflect a growing recognition that international law should be incorporated into domestic law (the law of the country).

Another central question is how to resolve conflicts between domestic law and international law when they arise. If an act of parliament is contrary to a provision in an international instrument, which source of law is enforced? There is a growing trend to recognise that international law should trump domestic law where they conflict.

The former **Soviet Union** illustrates these trends. Many constitutions in the former Soviet republics incorporate international law into domestic law and provide for the primacy of international law where it conflicts with domestic law.[34] The **South African** constitution goes further, recognising both treaty-based and international customary law.[35] Both the interim and the final constitutions consider international human rights law, including international customary law, as part of domestic law.[36]

The direct application of international law in the legal system of a country and the primacy of international law over domestic law can benefit women. When international laws and standards such as the ICCPR, CEDAW or Resolution 1325 are integrated into national law, the state is obligated to enforce them.

ADDRESSING CUSTOMARY AND RELIGIOUS LAW IN THE CONSTITUTION

Customary law refers to traditions, practices and cultural beliefs that function as law.[37] **Religious law** is a set of laws dictated by a religion,[38] such as Hindu law and Sharia law. In countries with entrenched customary and religious laws, constitution drafters

will have to consider and seek to reconcile these issues. Problems arise when a constitution does not address possible conflicts between cultural or religious rights and fundamental rights and address how such conflicts could be resolved.

Drafters may want to develop language that recognises these informal sources of law and attempts to reconcile them with fundamental rights based in international law. This is a challenging task. The constitution may reaffirm the importance of cultural and religious traditions, but it should also reaffirm that these sources of informal law must conform to international law. CEDAW recognises a state obligation to take measures to abolish laws, regulations, customs and practices that discriminate against women (Article 2) and to modify social and cultural patterns to eliminate discriminatory practices (Article 5).

Some constitutions have attempted to clarify the relationship between customs and practices and fundamental rights. The **Ugandan** Constitution (Chapter 24) states, "Cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy, and with the Constitution may be developed and incorporated in aspects of Ugandan life." The **South African** Constitution (Section 31) outlines the rights of cultural, religious and linguistic communities, but it qualifies these rights by stating that they "may not be exercised in a manner inconsistent with any provision of the Bill of Rights." In other words, communities are not allowed to enforce customs and practices that violate fundamental rights embodied in the constitution.

The question of how to reconcile Sharia law and international human rights remains controversial. **Sharia law** refers to traditional Islamic law; it is based on the Koran, the holy book for Muslims, and the summa, or teachings of the Prophet Mohammad. The central problem is that Sharia emphasises the obligations of the believer as a member of the religious community, while international human rights law emphasises the rights of the individual, and the state's obligation to protect those rights.[39]

The interpretation and application of Sharia varies by country; in some it is the supreme law, while in others it is applied selectively.[40] Some countries, such as **Turkey**, separate Islam from the political sphere

altogether. Some Muslim countries choose not to create constitutions because they consider the Sharia to be the constitution, and some of them have a "basic law," such as **Saudi Arabia** and **Oman**.[41] However, most Muslim countries today have written constitutions.[42] In some countries with constitutions, such as **Bangladesh,** Sharia law takes precedence over constitutional rights in practice.[43] In **Pakistan**, the constitution was originally a secular document, but religious amendments have been integrated into it over the years, thus Sharia law takes precedence over the constitution.[44]

In the recent cases of **Iraq** and **Afghanistan**, attempts were made by drafters to reconcile Islamic and international law by creating hybrid constitutions. These constitutions allow for the application of Islamic law in certain situations but attempt to make governments accountable to international norms. However, these experimental arrangements do not clarify completely the relationship between Sharia and international human rights laws. Some of the ambiguities leave women's rights open to interpretation. The **Afghanistan** Constitution, for example, has no provision addressing possible contradictions between Islamic law and gender equality.[45] In addition, the Afghanistan Constitution provides that "no law shall contravene the tenets and provisions of the holy religion of Islam" (Article 3), which means that Islamic law takes precedence over any other law that is inconsistent.

There is increasing recognition that women's rights under international law should be placed above traditions and beliefs that discriminate on the basis of gender. The validity and interpretation of such discriminatory customary and religious laws are being debated, as countries attempt to reconcile these various sources. Women continue to press for constitutions that not only recognise the importance of traditions, customs and religious beliefs, but also clearly place women's rights of equality and non-discrimination above inconsistent customary and religious law.

4. HOW ARE CONSTITUTIONAL RIGHTS GUARANTEED?

PROTECTING CONSTITUTIONAL RIGHTS

It is essential that constitutional rights be enforced and protected. All levels of government should be

required to enforce the constitutional provisions and apply international standards in decisions and policies. The constitution should detail this requirement in a provision on implementation and interpretation.

Specific procedures need to be established to consider whether legislative, executive and administrative acts conform to the constitution (constitutionality). In some countries, all courts at all levels have the authority to consider constitutional issues through a process called judicial review. In many countries, the power of constitutional review is restricted to one court—a supreme court, special chamber of a supreme court or constitutional court. Other countries delegate this responsibility to non-judicial entities. Increasingly, separate constitutional courts are the favoured mechanism for constitutional review. The mechanism of review must be entirely independent of the executive and legislative branches.

The judiciary is required to protect constitutional rights, including those of minority groups that may be underrepresented in the political process. In the **US**, for example, the judiciary applies "heightened" or "strict" scrutiny when considering the constitutionality of laws that may discriminate against certain groups because there is a recognition that the majority controls the decision-making process and can disadvantage the minority.

The constitution may provide for various commissions to monitor specific constitutional rights. Some constitutions establish a human rights commission or an ombudsman for this purpose. The constitution of **Fiji** established a public education commission to inform the public about the nature and content of the bill of rights and to make recommendations to the government about compliance with human rights standards. The **South African** Constitution provides for a human rights commission to promote human rights, monitor the observance of human rights, investigate cases of human rights violations and take steps to secure redress for individuals in cases of violations. In the Constitution of **Nepal,** the Commission for the Investigation of Abuses of Authority conducts inquiries and investigations relating to improper conduct or corruption by public officials.

The constitution may establish an ombudsman's office to advocate on behalf of minority groups and to investigate cases of discrimination.[46] Article 32B of the Constitution of **Hungary**, for example, establishes a Parliamentary Ombudsman for the Rights of National and Ethnic Minorities; the ombudsman is elected by parliament based on a recommendation by the president.

Monitoring and enforcement mechanisms for the protection of constitutional rights should be gender sensitive. Women should be represented on the constitutional court or other body that determines constitutionality questions, and equality provisions should be considered important aspects of constitutional review. In **Uganda,** for example, the constitution provides that "the state shall ensure gender balance and fair representation of marginalised groups on all constitutional and other bodies." Entities that are established to review questions of constitutionality or monitor the implementation of constitutional rights should receive gender training.

ENFORCING RIGHTS DURING A STATE OF EMERGENCY

Special protection for constitutional rights should be established in case of a state of emergency, which occurs when a government suspends normal procedures in response to a serious threat or crisis. Under international law, the situation must be a public emergency that threatens the existence of the state.[47] In some cases, constitutions are suspended and legislative power is curtailed. In these situations, human rights and constitutional rights are at risk of violation.[48]

The first step in protecting constitutional rights under these conditions is to include specific rules for the declaration, approval, maintenance and termination of a state of emergency in the constitution itself. The power of the executive branch in emergency situations should be defined and limited in the constitution (e.g. prohibiting the extension of terms in office, suspending elections, obstructing political competition, altering the constitution or dissolving the legislature).[49] The constitution should also set out the authorities and responsibilities of the other branches of government; it may provide for the legislature to be notified, consulted for approval or issue a declaration to establish a state of emergency.[50] The constitution should also establish a time limit on the state of emergency and how it can be extended. For example,

the **South African** Constitution, Section 37, specifies that a state of emergency can be declared only in cases where "the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency." In such cases, a declaration of a state of emergency is only valid for 21 days unless the parliament extends it for no more than 3 months at a time.

Many constitutions have specific provisions that describe the procedures and powers of the executive and legislative branches of government during national emergencies.

The constitutions of **Hungary**, **Switzerland**, **the Netherlands** and **South Africa** require a state of emergency to be declared by Parliament. In the **US, France, Nigeria, Nepal** and **India,** the executive declares a state of emergency, in which case the constitution usually requires that the legislature approve the executive declaration within a short period of time. Generally, it is the prerogative of the legislature to decide whether to extend the state of emergency before it expires.

During a state of emergency, a government may have the authority to curtail certain constitutional rights. This is called derogation of rights. The derogation of rights is strictly limited under international law in the **International Covenant on Civil and Political Rights (ICCPR)**. Article 4 states that in a public emergency, state parties may derogate certain rights "to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin."[51] Thus, a state party to the ICCPR must take into account all of its international obligations—both in treaties and in general international law—before derogating any rights and is prohibited from implementing discriminatory laws or policies.

The ICCPR prohibits derogation of certain fundamental rights, including right to life; prohibition against torture or cruel, inhuman or degrading treatment or punishment; prohibition against slavery; legality in criminal law; and freedom of thought, conscience and religion. In addition, the **UN Human Rights Committee,** in its General Comment 29 on States of Emergency, added the following rights that must be protected in emergencies: the right to be treated with humanity and respect for the inherent dignity of the human person; prohibitions against taking hostages, abductions or unacknowledged and unexplained detention; rights of persons belonging to minorities; prohibition against forced displacement; prohibition against advocating national, racial or religious hatred; requirement for state parties to provide remedies for violations of rights; and the right to a fair trial.

Section 37 of the **South African** Constitution reflects these limitations by stipulating that "any legislation enacted in consequence of a declaration of a state of emergency may derogate the Bill of Rights only to the extent that the derogation is strictly required by the emergency; and the legislation is consistent with the Republic's obligations under international law applicable to states of emergency."[52] This Constitution also articulates the right to seek redress for violations of rights through the court system and the obligation of the judicial branch to promote the Bill of Rights. The Constitution of **Fiji,** Section 187, allows the derogation of some specific rights if certain conditions are satisfied during a national emergency. The Constitution of **Fiji** also specifies that laws made under a state of emergency must be consistent with the country's obligations under international law.

At a minimum, a provision should be included in the constitution that addresses a state of emergency situation. The provision should specifically define a state of emergency, the procedures for declaring an emergency and the process for extending it, as well as the possible areas of derogation of rights, availability for individual redress if rights are violated and the responsibility of the state to uphold its obligations under international law, including those relating to non-derogable rights and non-discrimination. In addition, the legislative and judicial branches of government, civil society and the general public should monitor the situation closely to protect their rights from unnecessary restrictions and to prevent the executive from abusing its power. Women and NGOs should play a central role in ensuring government accountability during any state of emergency.

Priorities for Women in Constitution Making

Constitution-Making Process

• a high level of public participation in the constitution-making process; and

• special initiatives to include women in the education, consultation, and drafting phases.

Constitutional Language

The constitution provides a legal framework for all aspects of a country's social, economic and political life. Women need to understand the implications of the provisions and the language. Key issues to focus on include:

• separation of powers among the branches of government;

• criminal liability of members of government or parliament;

• individual rights that reflect international standards;

• incorporation of international law;

• limitations on customary and religious law in cases where it is inconsistent with international human rights;

• rights of minorities or diverse ethnic groups and power-sharing arrangements to promote their participation in decision-making;

• constitutional review and other monitoring mechanisms to protect rights; and

• protections in cases of emergency.

5. WHAT IS LEGISLATION?

Legislation refers to laws enacted by a legislative body (e.g. a parliament, congress or national assembly). The structure of the legislative branch, along with the other branches of the government, should be explained in the constitution. The constitution may describe in detail the basic structure, composition, authority, elections and procedures of the legislature. All legislation affects women, and in turn women legislators can be influential in a number of ways. This section focuses primarily on legislative issues that have a direct impact on women's rights.

6. HOW CAN WOMEN'S RIGHTS BE INTEGRATED INTO THE LEGISLATIVE PROCESS?

There are various ways of promoting women's rights in the daily functions of the legislature. Some countries have tried to improve **gender balance** in their legislatures by reserving a certain number of seats for women or by establishing quotas for the percentage of women in the legislature. These requirements should be described in the constitution. For example, the Constitution of **Afghanistan** provides for at least two female delegates from each province in the house of representatives. Of the one-third of senators selected by the president, 50 percent must be women. The **Rwandan** Constitution allows quotas and reserved seats for women in both houses of its parliament.[53] In **Bangladesh** a constitutional amendment was passed after years of lobbying by women that increased women's reserved seats in the legislature to 45 seats. However, these seats are filled using a system of indirect election while women continue to advocate for direct elections.[54]

Although attaining gender balance is one step toward ensuring the inclusion of women's rights in legislation, it is by no means enough. Indeed many women legislators are not always conscious of the gendered dimensions of their work or in some instances prefer to address other issues, as they do not want to be limited to a single issue. Furthermore, when there are few women in the legislature, they do not have sufficient support to address women's rights issues. One way of overcoming

this is by creating cross-party women's caucuses or committees. Legislatures often create small groups of members—committees or caucuses—that focus on specific topics such as the environment, foreign affairs or defence. Women's perspectives can be incorporated into these activities by requiring gender equity on parliamentary committees or by ensuring that women's caucuses follow the agenda and policy developments of the committee and insert gender perspectives. In **Rwanda**, a parliamentary subcommittee on gender examines each law to determine its impact on women.

Another approach is to create gender focal points within parliamentary committees. For example, the **Guatemalan** Congress created the Congressional Commission on Women, Minors and Family, which is working on reforming provisions of the criminal code that affect women's rights.[55] In order to ensure that women representatives are not marginalised from the voting process, one option is to require a certain minimum number of women legislators to be present for a vote on a bill.

7. HOW CAN WOMEN PROMOTE GENDER EQUALITY THROUGH LEGISLATION?

Discrimination can occur in the letter of the law (in the words drafted) or in the application of law. In many countries, laws discriminate against women in one or both of these ways. In addition, women often face discrimination in customary and religious laws and practices. Legislatures should review legislation, amend outdated laws and enact new laws to address these problems. CEDAW includes provisions on eliminating gender discrimination in such areas as politics, nationality, education, employment, health care and marriage and family. The following is an explanation of some areas of law that often discriminate against women. It is not an exhaustive list. It is important to recognise that all areas of law can include discriminatory provisions that affect women thus each piece of legislation should be examined and modified to eliminate gender discrimination.

CITIZENSHIP AND NATIONALITY LAWS
Laws governing nationality and citizenship are extremely important because they define the requirements for a person to be considered a citizen

and to be entitled to all the benefits that accompany citizenship. Some citizenship and nationality laws discriminate against women by recognising citizenship only through paternal lines, depriving women of their nationality if they marry foreign nationals, or failing to allow for naturalisation of foreign spouses of women. These types of provisions restrict a woman's capacity to maintain her citizenship and to pass it along to her children.

Legislation should give women equal rights regarding all aspects of nationality and citizenship and equal rights to pass on citizenship to children, specifically when women are denied rights because they marry a citizen of another country.

One of the major successes for women's equal citizenship rights occurred in **Botswana**. A woman challenged the country's Citizenship Act under which children of women married to foreigners were not entitled to citizenship, whereas children of men married to foreigners were entitled to citizenship. The Botswana Appeals Court invalidated the law as unconstitutional. As a result, the government passed the Citizenship Amendment Act in 1996, which eliminated discrimination against women with respect to transmission of citizenship to their children.[56]

Some Muslim countries have made improvements to citizenship laws in recent years to allow a woman who marries a foreigner to pass on citizenship to her children. In 2001, **Pakistan** amended its citizenship law to provide a woman married to a foreign man with the right to claim citizenship for her children. **Tunisia** modified its nationality legislation, allowing a Tunisian woman married to a non-national to pass on her nationality to her children, provided that they are born in Tunisia. **Jordan** changed the law to grant the right of Jordanian nationality to the children of Jordanian mothers married to non-Jordanian foreign nationals.[57]

FAMILY LAW
One of the most important sections of the civil code for women is **family law**. These laws set out rights and obligations regarding the family, including marriage and dissolution of marriage and child custody. In many cases, family law based on civil, customary and religious sources discriminates against women by placing them in a subordinate status within the family and limiting their legal rights in marriage.

For many women's rights activists, ideally family law articulates the equality of men and women in marriage, provides for the voluntary consent of both parties to enter into a marriage agreement and requires the same minimum age for marriage. Equal rights of divorce and fair divorce procedures, including the division of property and provision of maintenance, could also be stipulated in the law.

In January 2004, **Morocco** adopted a new family law supporting women's equality and marriage and divorce rights. Specifically, the new law provides that spouses share equal responsibility for the family; the wife is not required legally to obey her husband; the wife is entitled to self-guardianship; and the minimum age for marriage is the same for men and women—18 years. Both spouses have the right to divorce, and divorce is by mutual consent. Polygamy is regulated strictly, making it almost impossible; a woman can prevent her husband from taking additional wives.[58]

In **Nepal**, amendments to the civil law in 2002 established a woman's right to seek divorce on several grounds, including physical or psychological harassment by her husband; increased the penalty for polygamy; and improved women's rights to marital property.[59]

A new civil code in **Turkey** revised an outdated legal approach to women in the family. The new family law recognises that spouses are equal in the family, with equal decision-making powers, equal rights over the family abode, equal rights to property acquired during marriage and equal representative powers.[60]

In countries where customary marriages are prevalent but the state does not recognise them legally, women in these unions are denied marital rights. Some countries have attempted to address this problem by passing legislation that gives women in customary marriages legal rights.

In **South Africa**, the Recognition of Customary Marriages Act was passed to protect the legal rights to property, maintenance and inheritance rights of spouses in customary marriages. The law recognises customary marriages as valid if they satisfy a number of criteria, including that both prospective spouses are at least 18 years old and both agree voluntarily to the marriage. Under this law, spouses share equally in all property, money, assets and debts. Both spouses have equal status in making decisions affecting the property. These rights are protected even if the husband subsequently takes additional wives.

In 2003, **Mozambique** passed a new family law that legalised customary marriages and entitled women who live with partners for more than a year to inherit property. The law stipulates that both spouses share responsibility for the family. It creates an equal minimum age for marriage of 18 years for both sexes.[61] Polygamy is not recognised as legal, but the law entitles women in such marriages to full marital rights.[62]

PROPERTY AND SUCCESSION LAW

In many countries, statutory and customary laws of ownership and inheritance discriminate against women. Women's rights to land ownership and inheritance are restricted or denied. Some laws provide that women lose access to property upon the death or divorce from spouse, prevent women from holding non-land property because it is considered property of the family, prevent women from gaining additional property aside from dowry, allow a woman to retain only personal effects after divorce, restrict the percentage of inheritance that daughters receive compared with sons and limit the ability of widows to sell or exchange property.[63] In many countries, multiple sets of laws (civil, customary and religious) conflict with one another regarding the property and inheritance rights of women.

Divergent property and succession laws need to be brought into conformity, while eliminating provisions and practices that are discriminatory against women. Property and inheritance laws should not provide for different rights based on gender. Women should have equal legal rights to attain, own, transfer and inherit land and personal property. Some countries have passed new property laws that improve women's rights, often in response to pressure from women activists.

In many countries in **Africa,** recent legislative enactments have addressed gender inequalities in property and inheritance rights. In **Tanzania,** the Land Act (1999) and the Village Land Act (1999) give women the right to acquire, hold, use and deal with land; require women to be represented in land

administration bodies; and protect women's rights to co-occupy land. The Land Act overrides customary laws that restrict women's rights to use, transfer and own land.[64] In **Eritrea**, the Land Proclamation (1994) gives women the legal right to own and inherit land. In **Rwanda,** the Inheritance Law (1999) grants female children equal inheritance rights with male children and allows a wife to inherit a husband's property.[65]

LAWS ADDRESSING VIOLENCE AGAINST WOMEN

Violence against women is prevalent around the world in various forms, including domestic violence, rape, sexual harassment, trafficking, female genital mutilation, dowry-related violence and honour killings (see chapter on human rights). Unfortunately, violence against women is often considered to be less serious than other types of violence. In some countries, domestic violence, including spousal rape, is not considered a crime; crimes against women to maintain the family honour are tolerated; and female victims of sexual violence carry the burden of proof in a court of law.

The Committee on the Elimination of Discrimination against Women recognised violence against women as a form of discrimination in CEDAW General Recommendation 19.[66] The **UN Declaration on the Elimination of All Forms of Violence Against Women** ("the Declaration") defines violence against women broadly and recognises that violence against women can occur in the family or in the community or can be condoned by the state.[67] The Declaration states that governments should "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons" (Article 4). This Declaration is not a legally binding treaty, but is recognised as a source of international law.[68]

Violence against women should be prohibited under criminal law and punishable with the same severity as other crimes. These crimes should not require additional evidence or testimony to reach a conviction. The criminal law should delineate the elements and penalties for violence against women, including sexual assault, domestic violence, trafficking in persons and honour killings and allow

adequate legal redress for victims. The state should be required to establish witness protection programmes and make other assistance available to women.

Because domestic violence occurs in the private sphere, it has often been dismissed by governments as a family issue and outside the reach of the state. However, there is growing recognition that a state's obligation to protect equal rights also extends to those rights within the family. Increasingly, countries are passing laws specifically aimed at tackling domestic violence. International organisations, such as the UN, have supported the adoption of legislation against domestic violence. For example, a report by the **UN Special Rapporteur** indicated the importance of domestic violence legislation to address the problem.[69] The **Inter-Parliamentary Union** has also recommended that member states adopt measures to improve the capacities of their criminal justice systems, to investigate and prosecute domestic violence cases and to impose appropriate sentences for offenders.[70]

Some countries are amending outdated legislation and passing new legislation that improves the legal recourse available to domestic violence victims. Domestic violence laws have been passed in Africa, Europe, Latin America, Asia, the Middle East and North America. In **New Zealand**, a new law broadens the definition of domestic violence to include psychological abuse, threats, intimidation and harassment for protection orders, education programmes and improved legal services for women.[71] In the **Czech Republic**, the criminal code was amended in 2002 to recognise domestic violence as a distinct crime, punishable by up to eight years in prison.[72]

Some countries have enacted new criminal laws pertaining to rape and sexual assault. The laws in **Namibia** and **Croatia** define rape broadly and include spousal rape as a crime.[73] Chile amended its law to increase the penalties for sexual abuse.[74]

Bangladesh has legislation on violence against women, trafficking of women, dowry and, most recently, passed legislation prohibiting sexual harassment.

In many cases, cultural and traditional values have been used as a justification for violence against

women. The Declaration specifically provides that "states should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination" (Article 4). In some countries, criminal law continues to discriminate against women on this basis. In some countries, the law provides exemptions or more lenient sentences for husbands who commit honour killings. In 2001, **Jordan** repealed a section of its criminal code that exempted from the death penalty men who killed their wives or female relatives. However, a major defect is that judges are still allowed to commute sentences for these crimes.[75]

In Muslim countries, a major debate continues regarding "huddud" crimes and how these laws treat women. Huddud is the part of Islamic law, Sharia, that stipulates punishments for crimes, including "illegal sex" or sex outside of marriage. Women in **Pakistan, Sudan** and **Nigeria** have been sentenced to death by stoning under these laws.[76] In **Pakistan**, the huddud does not differentiate between rape and adultery.[77] A victim of rape carries the burden of proof. She is required to produce four male witnesses to prove rape; if she fails, she can be charged with adultery and slander. In **Pakistan**, the Women's Action Forum was formed in the 1960s to address discriminatory laws against women.[78] Recently, the Women's Action Forum introduced a bill to abolish the huddud ordinance and other laws that discriminate against women—but the law was not yet passed.[79]

IMPLEMENTING LEGISLATION

Enacting legislation that conforms to constitutional rights and international standards is a preliminary step for consolidating democratic rule of law. The implementation of the law is just as important as the law itself. The law loses credibility with the public and becomes meaningless if it is not applied and enforced.

It is essential to establish an independent judicial system capable of applying the law correctly and consistently. Judicial reform programmes should be used to improve the functioning of judicial institutions and people's access to legal redress. Judicial reform may include structural reforms to make the judiciary more independent, training for judges and other personnel, public relations and improved

administration of cases. In **Guatemala,** the World Bank provided a judicial reform loan to support the following reforms: improving court functions and institutional procedures, improving citizens' access to justice, fighting corruption and restoring public confidence in the justice system.[80] Training programmes for the judicial branch should integrate a gender component, so that judges, lawyers and court personnel understand international law, constitutional law and legislation as they affect women directly.

In order to change entrenched cultural, religious and traditional laws and practices that discriminate against women, public outreach is necessary. The public could be educated about legal rights through awareness-raising programmes. Such programmes should be designed to reach out to women, especially in rural and remote areas, who are often unaware of their legal rights, and to local authorities and leaders who enforce rights and responsibilities in local communities. Successful outreach efforts have educated communities about legal rights. For example, in **Rwanda,** such efforts helped local populations understand inheritance law.

Specific legislation must conform to the provisions of the constitution. The constitutional review process determines whether laws are in conflict with constitutional provisions. When legislation violates constitutional rights, the law can be challenged and perhaps changed. In some countries, advocates have used constitutional review processes to bring "test cases" to challenge the constitutionality of a statute.[81] This is an important source of redress available to women and other groups; it can be used to challenge a particular law and to push the legislature to enact new laws.

8. TAKING STRATEGIC ACTION: WHAT CAN WOMEN PEACEBUILDERS DO TO SHAPE THE CONSTITUTION?

1. Mobilise women to participate in drafting and ratifying the constitution and to organise input for the constitution.

2. Establish contacts with international women's rights groups and legal experts for support in the constitution-making process.

Key Issues for Women to Consider

Legislative Process

• gender balance in the legislature and special committees on gender

• elimination of discrimination in the letter, and the application of all laws

Family Law

• equality of men and women in marriage

• voluntary consent of both parties to enter into a marriage agreement

• equal minimum age for marriage for men and women

• equal rights of divorce and fair divorce procedures

• protection of legal rights in customary marriages

Property and Succession Law

• equal rights to acquire, hold, transfer, exchange and sell property

• equal rights to inherit land

• equal access to all property upon the death or divorce from spouse

• equal rights to hold non-land property

Citizenship and Nationality Laws

• right to pass citizenship through both paternal and maternal lines

• equal rights to retain nationality if a spouse is a foreign national

• equal rights to naturalisation of foreign spouses of women

Laws Addressing Violence against Women

• adequate criminal penalties and procedures and legal redress for acts of violence against women

• fair procedures relating to evidence and testimony that do not discriminate against women

• adequate laws and programmes for the protection and assistance of victims

Enforcing Legal Rights

• an independent and gender-sensitive judicial system

• gender training for the judicial branch

• public education about legal rights

• mechanisms available to challenge legislation that is inconsistent with rights

• training for police and legal professionals to ensure enforcement of laws

3   Circulate sample constitutional language founded in international standards, including:

- equality and non-discrimination clauses;

- provisions allowing for affirmative action and providing for minority protections; and

- qualifying language stating that women's rights under international law have primacy over inconsistent cultural, social and religious laws and practices.

4. Press for independent mechanisms, with equal representation of women, to monitor and protect constitutional rights, such as:

- human rights commissions or ombudsman offices to evaluate human rights practices, consider individual cases and provide redress for violations;

- constitutional review procedures to evaluate and issue decisions on the constitutionality of laws; and

- an independent judiciary to consider cases fairly throughout the legal system.

5. Work with local media to raise awareness of the importance of the constitution and women's involvement in constitution making.

6. Educate women and their communities, especially in rural areas, about constitutional rights.

9. TAKING STRATEGIC ACTION: WHAT CAN WOMEN PEACEBUILDERS DO TO STRENGTHEN LEGISLATION?

1. Monitor proposed and existing legislation and judicial decisions to make sure they conform to constitutional principles and international standards.

2. Establish a special committee in the legislature or other mechanisms to systematically analyse all legislation from a gender perspective to determine how it affects women.

3. Utilise international and regional expertise and experiences drawn from other countries to ensure that gender is considered in legislation.

4. Create civil society/governmental/parliamentary alliances to shape policies and legislation collaboratively and to disseminate information at the grassroots level.

5. Organise seminars and workshops for members of the legislature and judiciary (men and women) to highlight critical issues of concern, how and why they affect women and what legal provisions are needed.

6. Design and initiate education efforts through media or local dance and theatre groups to ensure that women, especially in more remote or rural areas, and relevant authorities and leaders understand the legal rights of women.

7. Create a network or support group of men in civil society, parliament and government to emphasise the importance of gender equality for society.

- Lobby religious leaders to discuss the issues in their weekly sermons and addresses.

- Find public figures with media appeal who will speak out on behalf of women.

- Reach out to local male leaders in rural communities to raise their awareness of issues as they impact women and build support.

8. Use available legal mechanisms to challenge and overturn laws that discriminate on the basis of gender. Advocate for judicial reform and institute gender-training programmes for judges, attorneys and other relevant people from the judicial branch.

9. Establish contacts and support among the media— newspaper, radio and television journalists—to cover legislative issues as they affect women and to raise awareness about new laws, rights and options for legal recourse.

10. Document and share information and experiences with women in other countries.

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ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPU	Inter-Parliamentary Union
NGO	Non-Governmental Organisation
UNAMA	United Nations Assistance Mission to Afghanistan
UNDP	United Nations Development Programme
UNIFEM	United Nations Development Fund for Women

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Democracy and Governance

ELIZABETH POWLEY AND SANAM NARAGHI ANDERLINI

Political leaders, the visions they promote and the systems and values they bring to governing a country play a pivotal role in fostering peace and development, promoting oppression or the resurgence of conflict. Since so much is at stake, during peace negotiations there is often great competition for power and the prospect of controlling a government. For countries that have little or no experience with democratic governance, the challenges are immense. But the post conflict environment does provide an opportunity for countries to create new structures of government and systems of "good governance." In situations where the international community has taken on state-building, its institutions assume some responsibility for issues related to democracy and governance. It is often a period when international aid is more readily available and civil society's participation is encouraged. It is also a time of opportunity for women. According to the Inter-Parliamentary Union (IPU), in the last five years post conflict countries have "featured prominently in the top 30 of the IPU's world ranking of women in national parliaments."[1] In particular, these countries have been effective at using quotas and reserved seats to "ensure the presence and participation of women in newly-created institutions."[2]

1. WHAT IS GOVERNANCE?

The term "governance" refers to the process of decision-making and the ways in which decisions are implemented (or not). In any given system, the government is the major actor, but others can influence the process. Non-state actors, such as religious or tribal leaders, civil society, major landowners, trade unions, financial institutions, the military and community-based groups can play important roles.

The following characterise a good system of governance: [3]

- participatory—encouraging wide citizen participation in decision-making;

- consensus-orientated—attempting to reach decisions based on widespread agreement;

- transparent—being open to scrutiny in decision-making processes;

- responsive—listening and responding to the needs of its citizens;

- effective and efficient—providing basic services; and

- equitable and inclusive—not excluding sectors of the population, especially those that are more vulnerable or marginalised.

There are many multi- and bilateral institutions that are concerned with promoting what they have termed "good governance" in post conflict and developing countries. Each of these institutions defines good governance slightly differently and has developed its own indicators by which it measures and evaluates progress toward good governance. The World Bank, for instance, has identified six indicators of good governance "to help countries identify areas of weakness so that capacity building and assistance strategies are more effective." Those indicators are:

- voice and accountability;

- political stability and lack of violence;

- government effectiveness;

- regulatory quality;

- rule of law; and

- control of corruption.[4]

International actors consider "good governance" to be a key for building sustainable peace and long-term development.[5] Progress toward good governance is increasingly used as a requisite for the provision of aid.

Despite the variations in definitions and indicators of good governance, most institutions agree that good governance typically includes efforts at democratisation and decentralisation, the introduction of free and fair elections, participatory politics, the creation of an independent civil society, guarantee of a free and independent press and respect for the rule of law. Each of these topics, among others, is discussed below.

2. WHAT ARE THE KEY COMPONENTS OF "GOOD GOVERNANCE"?

In countries involved in peace processes, questions relating to governance often consume a significant portion of the discussions; typically demands for democratisation, including elections and timeframes for transition, are addressed. Other related elements include discussions surrounding the nature of political participation, electoral systems, issues of transparency and separation of powers, as discussed below.

DEMOCRATISATION

Democracy is a system of government in which power is vested in the people (the population) and exercised through representatives chosen in free and fair elections. But a democracy does not just mean that "the majority rules." A democracy also includes and protects the human rights of minorities and respects multiple or "plural" views and opinions. In a democracy people have rights as citizens, but they also have responsibilities to participate in the governance system.

There are many versions of democracies around the world (e.g. electoral, consultative) and ongoing debates about the extent to which "one size fits all" with regard to democracy. The process a country goes through in attempting to become more democratic is referred to as **democratisation**. In order for a country to be truly democratic, all of its citizens—men and women—must be empowered to participate fully in the governance process (as citizens, voters, advocates, civil servants, judges, elected officials, etc.).

FREE AND FAIR ELECTIONS

An election is the procedure by which citizens of a country choose their representatives and leaders and assign authority. Elections must be held regularly so that elected officials remain accountable to the population; if they do not uphold their responsibilities to the electorate, they can be voted out of office in the next election. Elections must be held within a period of time that is prescribed in the constitution, or fundamental law. For an election to be truly democratic, it must be:

- universal—All citizens of a country must have the right to vote and to be elected, without discrimination based on sex, race, language, religion or political affiliation.

- equal—The value of each vote must be the same.

- secret—The balloting must be private so that citizens can participate without being afraid; only the voter must know for whom she or he votes.

- direct—The voters must be able to choose their own leaders without an intermediary.

- wide choice—The voters must have the opportunity to choose from among several available candidates.

The first self-governing country that granted women the right to vote in elections was New Zealand in 1893. Women in Kuwait still do not have the right to vote in 2004.

DECENTRALISATION

An increasingly important component of democratisation in many parts of the world is **decentralisation**. Decentralisation is the process of transferring authority and responsibility from the central government to provincial and local levels. Countries pursue decentralisation for a variety of reasons, including a desire to make the government more receptive and accountable to the needs of its population and/or to respond to pressure from donors to "downsize" central government budgets.

Decentralisation is based upon the notion that various levels of the government have different expertise and abilities to address problems. For example, national defence and monetary policy are clearly best set at the national level, but policies

concerning schools, local police protection and some public services are often better determined at the local level with community input. Critics of decentralisation, however, charge that it weakens parts of the state that, for the sake of peacebuilding and human security, need to be strengthened.

There are three types of decentralisation: political, administrative and fiscal. Political decentralisation involves the election of local-level leaders. Administrative decentralisation occurs when some of the government's decision-making is managed at the local level. And fiscal decentralisation refers to the national government sharing budgetary responsibility for collecting revenues and making expenditures with local government representatives.

Decentralisation processes often include local-level elections. They provide an important opportunity for women to become involved in decision-making in their communities. In **Rwanda**'s 2001 sector- and district-level elections, a special "triple balloting" technique was introduced that resulted in the election of women to 27 percent of district council seats. In those elections, every voter chose one general candidate, one female candidate and one youth candidate. Not only did this system set aside seats for women and youth, it also required that the entire electorate vote for women. In this way, Rwanda's decentralisation programme began to make the election of women more socially acceptable.[6]

PARTICIPATORY POLITICS AND POLITICAL PARTIES

The concept of "participatory politics" refers to the involvement of all citizens in politics and policymaking. This requires a relationship between the government and society in which the participation of citizens and a plurality of views are encouraged. This can be supported by strengthening political parties; encouraging the participation of marginalised groups, such as women and youth; and by strengthening civil society (described below).

The right to convene and articulate political views is a key principle of good governance and democratisation. Political parties are one of the cornerstones of a democratic political system. Parties are critical because they provide a structure for political participation for people with similar beliefs and interests. By joining together, individuals, who would otherwise not be influential, can make their voices heard in the political process through their support of a political party. Political parties also provide leaders with a space in which to learn the skills needed for governing a society.[7] A democracy must have more than one major, viable party so that a single group does not dominate the government and voters have a choice. This principle is called **multipartyism**. Membership in political parties must be voluntary.

It can be difficult for women to achieve leadership positions within political parties and to be selected as candidates because, in many countries, parties operate or govern themselves without written party rules or transparent procedures. Such lack of openness allows patronage systems and "old boys' networks" to flourish, effectively excluding women from decision-making positions and candidate lists.

In some countries, political parties have adopted internal **quotas** for women's participation to ensure that they always put forward a certain number of women's candidates. Countries as different as Argentina, Botswana and France all have political parties that mandate the participation of women.[9] An important advocacy strategy for women is to work with political parties to make sure that the party **platform**, the formal declaration of the principles and positions that the party supports, describes its positions on issues important to women.

WOMEN'S POLITICAL PARTICIPATION[10]

Women are under-represented in elected office and formal governing structures throughout the world for a number of reasons, including discriminatory social attitudes, lack of education and preparation and structural barriers to their democratic participation. Specific challenges—and some ways in which they can be overcome—are listed below.

Voter Registration and Voting: Women's participation as voters in elections is a critical expression of their rights as citizens in a democracy. Even if the right to vote is not formally denied, there are significant barriers to women's participation as voters. For instance, in order to register to vote, identity and citizenship documentation are usually required. This

Women for Prosperity's Cross-Party Work in Cambodia[8]

Governance in Cambodia is characterised by political violence, intimidation and, because of the dominance of one political party—the Cambodian People's Party—an absence of cross-party cooperation. One party wielding such power has had negative consequences for women's alignment across parties for the purposes of promoting gender issues, particularly at the national level.

Despite this, and in the face of harassment and threats, Cambodian women working through NGOs are at the forefront of building bridges across party lines. Women for Prosperity (WfP) is one of the most effective organisations in this sector. Led by returnee Pok Nanda, WfP has pioneered a programme that not only encourages and enables women to enter politics, but also bridges cross-party divides at the commune level. Among its network are women council members from all sides, including the three main political parties. WfP focuses on the common challenges facing women in politics regardless of ideology and provides ongoing coaching, thus building their skills over time. In preparation for the 2000 commune council elections, WfP supported 5,527 candidates, offering guidance in public speaking, assisting in speechwriting, answering questions from voters and combating challenges from male party members unsympathetic to women's participation. With plans to formalise a nationwide network, WfP has forged new political ground for women's participation. It has also provided an effective model for cross-party cooperation that is limited at higher political levels.

can be difficult for women who do not have documentation in their own name or, particularly in conflict situations, for women who are internally displaced or have fled their countries and lost their documentation.[11] Often polling stations are far away and women have no transportation or travel is restricted by custom and tradition. Voting hours can also be difficult for working women or those with childcare responsibilities. Another concern is the problem of "family voting," which is the practice of women being led into polling booths by their husbands, who effectively do the voting for them. This is a serious problem in some countries and is a clear violation of women's right to vote in free and fair elections.

Election administrators should include women and gender-sensitive men among their ranks and must adopt policies that do not unfairly discriminate against women.[12] If women do not have official identity papers, their identity and eligibility as voters could be verified by others in the village/community. International election observers should receive gender-sensitivity training so that they are able to observe and address the challenges that women voters face. Election day should be made a holiday, or polling stations should remain open for extended hours and be close to or in central locations (e.g.

schools, churches, mosques) accessible to the entire population, including women. Ballots should include photographs and party symbols to aid those voters who are illiterate (a disproportionate number of whom are women).

Voter Education: Voter education includes training on topics such as the mechanics of voting (e.g. that the ballot must be secret) and the accountability of elected officials to voters. Women, particularly rural women, are less likely than men to have access to voter education resources or to be prepared to exercise their franchise. One successful project in preparation for **South Africa's** first democratic elections in 1994 reached out to women voters by deliberately using women as trainers and scheduling sex-segregated trainings so that women could voice concerns and ask questions without interruption by men.[13]

Civic Education: Civic education programmes are an opportunity to train and sensitise citizens about, for example, their rights and responsibilities, democratic principles, the constitution and good leadership. Civic education is a longer and more extensive process than voter education. It should begin in schools and communities long before elections are scheduled and continue after they have been held.

Civic education is based on the concept that a democracy needs an informed and critical population to succeed. Civic education programmes also provide an opportunity to confront attitudes and biases that impede women's participation in the governance of the country; they should emphasise women's rights and abilities.

Funding for Campaigns: Campaigning for political office in any country is a costly and time-consuming affair. Initial costs can include starting a petition, establishing a campaign office, gaining name recognition, securing the party nomination, buying advertisements, conducting voter outreach and even paying a monetary deposit to take part in the election. There are a variety of ways in which states and political parties legislate and manage elections and campaigning processes. In some countries parties have a limited time for campaigning. In other instances, the budgets for political party campaigning, or the level of media exposure and advertising they are permitted, are limited by law. For women candidates—particularly those running for office for the first time—raising sufficient funding to contest the election can be a significant challenge, especially when competing against male incumbents. However, some of the barriers can be overcome by tapping into grassroots networks and constituencies. In **Northern Ireland,** the Northern Ireland Women's Coalition (NIWC) had no funds at the start of their six-week campaign, but its members contributed their own funds and their network developed campaign materials (using cardboard boxes and other household materials) in their homes.

Electoral Systems: There are a variety of electoral systems in the world. Two of the most common— proportional representation and majoritarian systems—have the potential to produce very different results for women candidates.

In **proportional representation (PR) systems** the seats are divided among parties based on the overall percentage of votes that each party wins (and seats are filled by candidates from political party lists). More than one official is elected in each multi-member district. PR is known as a "woman-friendly" system because the multi-member districts provide more opportunities for women to be elected—the more seats, the more potential for women to be

elected. Thirteen of the top 15 countries in terms of women's representation in parliament, are countries with PR systems.[14] One commonly cited difficulty with such systems is that political parties often fail to win enough seats to govern alone, forcing parties to establish coalition governments. This can potentially lead to large and unwieldy coalitions that have difficulty governing, but it can also be seen as a strength as it ensures that several groups are represented in the governing coalition.

In PR systems, research shows that **closed lists** (where voters choose based on party affiliation only) are often more conducive to the election of women candidates than **open lists,** provided women are placed in winnable positions on the closed lists. In open list systems, voters are able to vote for any of the candidates on the list, which is of concern because sometimes voters intentionally avoid voting for the women among the candidates. Closed lists are especially effective for women if political parties place them either high enough up on the party lists or alternated with men in a **zebra** (every other "stripe" is a woman) or **zipper** list style.[15] The African National Congress in **South Africa** mandates a woman be listed as every third candidate on a party list; women hold 32 percent of the seats in parliament.

In a **majoritarian system** only one official represents each district and the person who gets the most votes wins the seat outright. It is a much more difficult system for women candidates seeking to win election. In the **United States** Congress, which uses a majoritarian system, women hold only 14 percent of seats.

Electoral Management Bodies: Many countries have electoral management bodies (EMBs) that aim to increase public confidence and participation in electoral processes. EMBs have varying mandates, but among their key activities are:

- promoting and ensuring transparency in the financial affairs of political parties;

- reviewing electoral laws and promoting best practices;

- encouraging greater public participation in elections and understanding of democratic processes and principles; and

• ensuring that there is electoral equality both regionally and sectorally—in other words, that the identities and interests of communities are being represented.

EMBs can play a key role in highlighting gender issues in elections by identifying obstacles that prevent women's participation, as well as conducting voter education programmes with outreach to women.

Quotas:[16] One of the most decisive, but controversial, ways to ensure that women are represented among elected officials is the adoption of quotas that set aside or reserve seats for women. Some people feel that quotas are unfair or undemocratic, because they require voters to elect people they might not otherwise choose. Other people fear that women who achieve elected office because of quotas will not be respected because they were not elected on their own merits, but because of their sex. On the other hand, many people favour quotas because they rectify historic exclusion and overcome existing barriers. Quotas can also ensure that women reach a critical mass in legislatures so that individual women are not isolated token representatives. Fundamentally, those who support quotas do so because they feel that women's participation is valuable and necessary for democratic governance.

There are a variety of quotas: those mandated by constitutions, those legislated by parliaments and those adopted internally by political parties. In **Uganda**, one seat from each parliamentary district must be held by a woman, which is a system known as **reserved seats**. In 2004 **Iraq**, the Transitional Administrative Law did not mandate a quota but did set a 25 percent target for women's representation. Quotas are frequently enacted as temporary or special measures, with the expectation that when equitable representation of women can be achieved without them, they will no longer be necessary. However, it is rare for quotas to be removed after being established; often they are strengthened. One exception is **Denmark**, where political parties used to have quotas for women's representation but no longer need them. Without quotas, women in Denmark hold 38 percent of seats in parliament.[17] On the other hand, removing quotas can be detrimental for women. A case in point is **Bangladesh;** following the expiration of the quota

law in April 2001, the number of women parliamentarians dropped from ten to two percent in the October 2001 election. An important concern about quotas is that they are often not respected. **France** is a good example; the law requires 50 percent representation of women, but at the national level, women are 12 percent of representatives.

For many women activists, getting women elected with the use of quotas is only half of the battle. Quotas can guarantee that women are elected in greater numbers but they cannot guarantee that those women will be gender sensitive or responsive to women's issues. Women in civil society should proactively reach out to women legislators and build coalitions to ensure that enough attention is paid to women's concerns. Additionally, women activists need to design mechanisms that will hold women legislators accountable to their constituencies. Women in civil society should also work to support and campaign for women candidates who have proven that they are sensitive to women's issues.

INDEPENDENT CIVIL SOCIETY AND MEDIA
"Civil society" refers to the non-governmental and, usually, non-profit sectors (although some definitions of civil society do include the business community and media outlets). Civil society includes non-governmental organisations (NGOs) such as community associations, trade unions, professional leagues, religious and advocacy groups. It also describes the activity that occurs between the government and individual citizens. Civil society is critical to the development of a democracy because it can represent the views of citizens, hold elected officials accountable to the population and monitor democratic institutions (see chapter on civil society).

From a governance standpoint, the laws and legal procedures developed for the registration of NGOs is also of critical importance. In many cases, the legal framework acts as an obstacle to the establishment of independent NGOs and becomes a vehicle for the government's control of civil society. In other instances if laws are too lax, they do not protect against entities that form NGOs for the purpose of profit or political gain.

Many countries have state-controlled radio and television that the government uses as a medium for

broadcasting its own messages and views. But an independent media is an important pillar of good governance. Civil society groups and political parties should have the right to broadcast and publish information and ideas without fear of arrest or undue pressure. It is also critical to have a truly independent press that is sceptical of all parties, highlights corruption across the board and is not just the "mouthpiece" of one group or another. In states with authoritarian regimes or in the early stages of democracy, the Internet is increasingly used to share information. Similar to civil society, legislation governing media and protecting independent media is of critical importance and should be developed at an early stage.

RULE OF LAW

Respect for the rule of law is another key pillar of democracy. It means that the same constitution and set of laws govern and protect everyone and that all citizens are equal. It requires an independent judicial system that is fair and transparent and that prevents the government from wielding arbitrary power.

Constitutionalism and Legal Rights: A country's constitution is its fundamental or supreme law, its overriding legal framework. It must guarantee the rights of all its citizens—women and men—and is critical to the development of a stable democracy. Because of their central importance, constitutional issues and legal rights are addressed more fully in a separate section of this toolkit.

Judicial Independence and Impartiality: The judiciary is the system of courts that oversees legal proceedings and makes up the judicial branch of government. The courts must be independent from the other branches of government. "If a judiciary cannot be relied upon to decide cases impartially, according to the law and not based on external pressures and influences, its role is distorted and public confidence in the government is undermined."[18]

Women, especially, face challenges vis-à-vis the judicial system. In addition to laws and statutes that discriminate against women, "corrupt judicial procedures and the prevalence of 'old boys' networks: makes it in many cases impossible for women to win legal battles in a transparent and open way."[19] However, women can make positive contributions to the justice system by serving as witnesses and testifying about abuses.

Women judges have also contributed significantly to the development of national and international law, especially with regard to gender-based crimes in war. At the International Criminal Tribunal for the former Yugoslavia, in every case that resulted in significant redress of sex crimes (perpetrated against women *and* men), women judges were on the bench (see chapter on transitional justice).[20]

Anti-corruption: Corruption in government is the misuse of public goods, funds, or office for private gain. It includes behaviour such as embezzlement, fraud and the taking or requiring of bribes for the provision of public services. In addition to undermining economic development, corruption also undermines good governance. "Corruption in elections and in legislative bodies reduces accountability and representation in policymaking; corruption in the judiciary suspends the rule of law; and corruption in public administration results in the unequal provision of services."[21] Various studies have demonstrated that women are less likely to be corrupt than men. Research by Women Waging Peace found that, in **Cambodia,** where a lack of anti-corruption legislation is a major threat to good governance, women were leading anti-corruption efforts within civil society and female politicians were perceived to be less corrupt than their male colleagues.[22]

Human Rights: Human rights are the basic rights and freedoms to which all human beings are entitled. The most basic human rights include the right to life and liberty, freedom of thought and expression and equality before the law. The respect for and protection of human rights, including the rights of minorities and of women, is a cornerstone of any democracy. The Universal Declaration of Human Rights and the UN Charter are just two of the many international instruments that delineate basic and universal human rights (see chapter on human rights).

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) specifically addresses women's human rights. Internationally it is recognised that "discrimination against women, in the form of violence in particular, is among the most serious unresolved problems in human rights, pervading all aspects of human rights."[23] Even if international treaties have been ratified and national legal systems nominally protect

women, customary laws, social attitudes and cultural practices can violate women's human rights.

Monitoring and defending human rights standards requires holding governments, militaries, political parties and other actors accountable. Often, civil society plays an important "watchdog" or monitoring role and is critical to the promotion of human rights. Women all over the world have formed NGOs to monitor human rights violations, educate women about their rights and promote adherence to international standards (see chapter on human rights).

3. WHO DESIGNS AND IMPLEMENTS GOVERNANCE PROGRAMMES?

While governance is often thought of as the responsibility of national authorities, in the aftermath of conflict, international actors often provide an umbrella under which new national structures are formed.

In **East Timor** (2000), the UN mission was responsible for establishing a new state, complete with systems of executive power, parliament and judiciary. In **Cambodia** (starting in 1993), UNTAC (the UN Transitional Authority) was effectively in charge of running the country, while the national authorities were still building their capacities and developing into operational entities, including executive and legislative branches. In **Afghanistan** (starting in 2001), the UN mission is trying to play a supportive role for the governing authorities, but in reality has greater capacity and resources than national actors. The **UN Security Council** determines the mandate of the UN in each country that hosts a mission.

In addition to the UN, regional organisations such the North Atlantic Treaty Organisation (NATO) and the Organization for Security and Cooperation in Europe (OSCE) have become involved in post conflict governance and "nation-building" efforts, notably in the Balkans.

Donor countries and their bilateral development agencies (e.g. US Agency for International Development, United Kingdom Department for International Development, Canadian International Development Agency), often through their surrogates (international

NGOs), have a role in designing programmes to support national-level democracy and governance efforts. They work in partnership with a variety of international and local groups, including NGOs, relief and development agencies. Their priorities are determined by the donor country's interests as well as by local needs (for more information on donor countries, see chapter on post conflict reconstruction).

Since the mid-1990s more effort has been put into strengthening civil society capacities to engage in political issues. In **Cambodia** UN agencies such as the UN Development Programme and UNIFEM (the UN's Fund for Women) were active in providing training for civil society and NGO development, encouraging people to participate in political processes and promoting democratic values. Many of the NGOs formed during that time continue to thrive today. Some of the individuals that participated in UN initiatives at the civil society level later ran for election and are now in formal national governance structures such as parliament and government.

In **Rwanda,** local women's civil society, represented by the umbrella NGO Pro-Femmes/Twese Hamwe, has established a consultative process with national-level government, specifically women in the executive and legislative branches. While some charge that civil society has been co-opted or controlled by the national government and that this consultative process is not free of problems, the system does provide space for civil society's input and contributions on all manner of governance issues, including proposed legislation.

4. WHAT INTERNATIONAL POLICIES EXIST TO ADVANCE WOMEN'S PARTICIPATION IN GOOD GOVERNANCE?

Several international instruments exist that facilitate women's involvement in good governance. Three examples are listed here.

- **International Covenant on Civil and Political Rights (1966, 1976)**

The International Covenant on Civil and Political Rights was adopted and opened for signature, ratification and accession by the UN General

Assembly in 1966 and entered into force in 1976. The UN Office of the High Commissioner for Human Rights monitors the Covenant. Article 3 states: "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."[24]

• **Convention on the Elimination of All Forms of Discrimination Against Women (1979, 1981)**

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted and opened for signature, ratification and accession by the United Nations General Assembly in 1979 and entered into force in 1981. CEDAW is monitored by the CEDAW Committee under the auspices of the UN Office of the High Commissioner for Human Rights. It defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."[25] See the Toolkit Appendices for the full text of CEDAW.

• **UN Security Council Resolution 1325 (2000)**

UN Security Council Resolution 1325, which is described at length in other sections of this Toolkit (see chapter on international policies and legal mechanisms), calls for women's participation in decision-making, conflict resolution and post conflict reconstruction. Specifically, the Security Council in its unanimous adoption of 1325, reaffirmed "the importance of their [women's] equal participation and full involvement in all efforts for the maintenance and promotion of peace and security and the need to increase their role in decision-making with regard to conflict prevention and resolution."[26]

5. HOW DO WOMEN CONTRIBUTE TO GOOD GOVERNANCE?

Evidence from around the world indicates that women are leading efforts to promote good governance. In post conflict countries:

• Women have established coalitions across party, ethnic and conflict lines. In **Rwanda**, women formed the first cross-party political caucus in their country's parliament. Other legislators have since followed their lead and established cross-party caucuses to deal with common concerns (e.g. population issues), regardless of party affiliation. Women in **Cambodia** and **Bosnia** have created similar mechanisms to reach across traditional dividing lines.

• Women in civil society and political parties have advocated for the inclusion of women (and minorities, youth and the handicapped) in government by quotas or other means.

• Women in civil society have engaged with women in government (often at the Women's Ministry and in parliament), creating a consultative relationship and a channel for information to flow from grassroots activists and civil society leaders to women who hold positions of authority in government.

• Women have engaged with locally and nationally elected leaders on issues that are important to women. In **Rwanda**, for example, women managed to change the law on inheritance so that women can now inherit property. In other parts of the world, women have advocated for gender-sensitive approaches to land reform, employment laws, family law and other issues.

• Women's participation has transformed debate on topics that are not traditionally considered "women's issues." For example, women in post-apartheid **South Africa** succeeded in democratising the national debate over security and shaping defence policy by consulting widely with the population on causes of insecurity and priorities for the future. South Africa, in part because of the contributions of women, has adopted a "human security" framework as opposed to a solely "military security" approach.

• Women have led NGOs and civil society efforts that highlight abuses. In **Cambodia**, for instance, women civil society activists are leading anti-corruption efforts. Women's peace groups in **Israel** routinely speak out about human rights abuses.

• Research demonstrates that women in elected office, particularly at the local level, are responsive

to the needs of their citizens, consultative in their decision-making and, perhaps because they are aware of being so closely scrutinised, less corrupt in the execution of their duties.

• Women—both in civil society and in government—monitor progress towards implementation of international instruments that protect women. Women have taken the lead in many countries, for instance, in reporting on CEDAW. The Women's International League for Peace and Freedom (WILPF) monitors the implementation of UNSC Resolution 1325 through their website <www.peacewomen.org>.

6. TAKING STRATEGIC ACTION: WHAT CAN WOMEN PEACEBUILDERS DO?

1. Mobilise and consult with women nationally and at local levels to develop a common agenda or position statement on women's human rights and perspectives on all issues. Use this to lobby international and local parties and to ensure that they are including gender perspectives in their plans.

   • Develop gender-sensitive briefs on key issues being addressed during election campaigns to highlight the differential impact of policies on women and men.

2. Meet with and train women as candidates for political office at local and national levels, encourage their engagement on all issues and show them that women's votes matter. Identify a key group of women who have the capacity to enter the national political stage, help strengthen their skills and advocate for their participation.

3. Join political parties or lobby all parties demanding that:

   • they include women among the party leaders;

   • they adopt quotas for women's participation within the party; and

   • there is a party agenda for women's rights and equality.

4. Meet with elected officials including the electoral commission and lobby them to make sure that issues of importance to women are on the agenda. Partner with national electoral commissions to undertake a range of activities including:

   • conducting voter education programmes for women;

   • identifying obstacles to women's political participation including in elections; and

   • providing gender-sensitive training to elected officials.

5. Encourage women elected officials to create a forum for consultation with civil society. Convene meetings for women party members and politicians to meet across political lines and encourage the development of a women's caucus in parliament.

6. Vote and explain the importance of voting to other women and conduct voter education campaigns.

7. Review all laws and budgets in your country with a "gender perspective" to determine if they include women and address women's needs. Solicit and collect women's perspectives on proposed legislation and spending priorities and present these ideas to national-level authorities and donor countries.

8. Monitor progress on implementation and enforcement of existing laws on women's rights. In constitution drafting, advocate for the inclusion of international norms and standards on women's equality.

9. Review election procedures and advocate for guidelines and processes (e.g. voter eligibility and registration and polling procedures) that make elections more democratic and more accessible to women. Monitor elections.

10. Push mainstream newspapers, magazines or radio programmes to educate and inform people of their rights and responsibilities and to address women's issues.

WHERE CAN YOU FIND MORE INFORMATION?

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ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
EMBs	Electoral Management Bodies
IPU	Inter-Parliamentary Union
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
NIWC	Northern Ireland Women's Coalition
OSCE	Organization for Security and Cooperation in Europe
PR Systems	Proportional Representation Systems
UN	United Nations
UNDP	United Nations Development Programme
UNIFEM	United Nations Development Fund for Women
UNSC	United Nations Security Council
UNTAC	United Nations Transitional Authority in Cambodia
WfP	Women for Prosperity
WILPF	Women's International League for Peace and Freedom

ENDNOTES

1. "Women in Parliaments 2003: Nordic and Post-Conflict Countries in the Lead." *Inter-Parliamentary Union* 1 March 2004. 8 September 2004 <http://www.ipu.org/press-e/gen183.htm>.

2. Ibid.

3. "What is Good Governance?" Bangkok: UN Economic and Social Commission for Asia and the Pacific, n.d. 6 September 2003 <http://www.unescap.org/huset/gg/governance.htm>.

4. "Measuring the Quality of Governance." *The World Bank* 14 July 2003. 6 September 2003 <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20119698~menuPK:34457~pagePK:34370~piPK:34424~theSitePK:4607,00.html>.

5. The Post-Conflict Reconstruction (PCR) Project, for instance, has identified "governance and participation" as one of four pillars for post-conflict development. Others identified in this framework are security, justice and reconciliation, and social and economic well being.

6. For a more complete description of the triple balloting technique, see Powley, Elizabeth. *Strengthening Governance: The Role of Women in Rwanda's Transition*. Washington, DC: Women Waging Peace, 2004. 20 July 2004 <http://www.womenwagingpeace.net/content/articles/RwandaFullCaseStudy.pdf>.

7. *Political Party Development* 2003. National Democratic Institute for International Affairs. 6 September 2004 <http://www.ndi.org/globalp/polparties/polparties.asp>.

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13. Ballington, Julie. *Encouraging Women's Participation Through Voter Education*, n.d. 5 October 2004 <http://www.un.org/womenwatch/osagi/feature/postconflict/BallingtonEtAl.pdf>.

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15. Ballington and Matland.

16. International IDEA has extensive online information and resources available about quotas at <http://www.idea.int/women/parl/ch4b.htm>.

17. Ballington and Matland.

18. *Guidance for Promoting Judicial Independence and Impartiality*. Washington, DC: USAID, 2002. 6. 6 September 2004 <http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacm007.pdf>.

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Civil Society

SANAM NARAGHI ANDERLINI AND JUDY EL-BUSHRA

Conflict and violence typically limit or even destroy the capacity of people to provide for themselves and of the state to provide the basic services that enable society to function. Agricultural production and commerce are disrupted. Everyday social functions such as caring for children and the sick are reduced. Formal structures that govern communities are destroyed or become dysfunctional. Health care and social welfare may disappear. Schools may shut down. Rubbish may not be collected. Water and electricity services may be disrupted, causing a rise in illness and epidemics. Police services may become debilitated, leading to a rise in insecurity and increased reliance on fighting factions. In many countries suffering from civil war, "civil society" increasingly has taken on the burden of providing services, caring for communities, speaking out on behalf of the population and attempting to influence the policies and actions of national and international actors vis-à-vis the conflict. This chapter provides an overview of civil society, with an emphasis on the NGO sector. It draws attention to women-led organisations and the opportunities and challenges they face.

1. WHAT IS CIVIL SOCIETY?

The term civil society was originally coined to describe popular movements in Latin America that sought to counterbalance the power of oppressive governments on the one hand and exploitative international financial interests on the other.[1] But it has expanded to include a variety of non-state actors, including formal organisations, informal networks and social movements. Since the end of the cold war particularly, non-governmental organisations (NGOs) have flourished and are increasingly recognised as critical actors in the peace and security arena.

According to the Centre for Civil Society at the London School of Economics, "civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organisations such as registered charities, development non-governmental organisations, community groups, women's organisations, faith-based organisations, professional associations, trades unions, self-help groups, social movements, business associations, coalitions and advocacy groups."[2]

The inclusion of the business sector under the umbrella of civil society is a matter of some debate internationally. Some people are willing to accept the business sector as part of civil society, whereas others perceive the business community to be linked too closely to the government, particularly in some countries. NGOs such as International Alert have developed programmes to promote a peacebuilding role for companies including better ties between businesses and the communities in which they operate in areas affected by conflict.

Civil society is contrasted with the state (government and parliament) and formal political sector (e.g. political parties) as an alternative means of directly representing the will of ordinary citizens that organise in private entities but are active in the public arena.
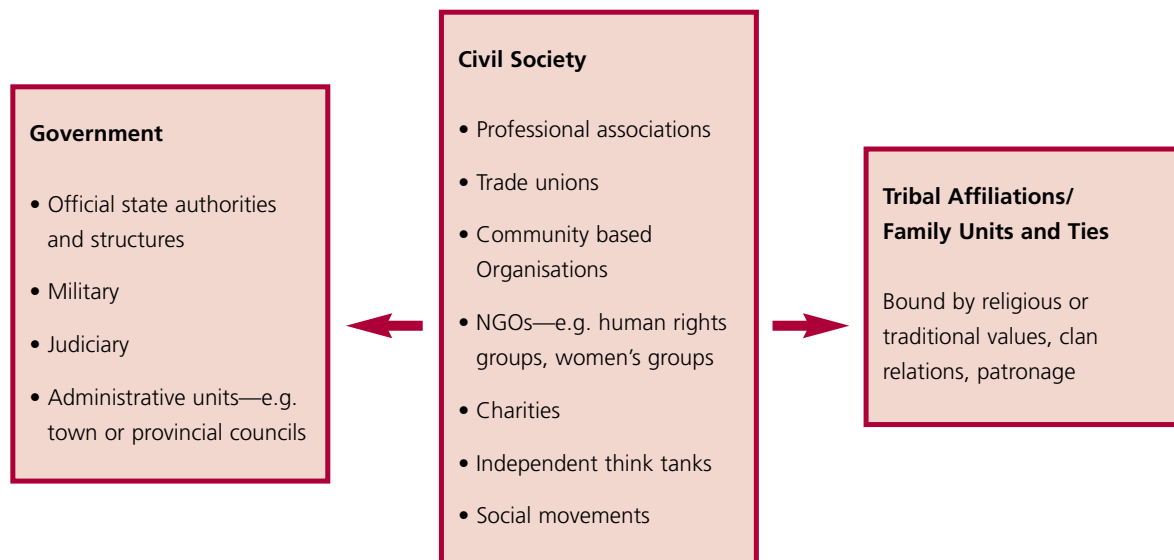
WHY IS A VIBRANT CIVIL SOCIETY IMPORTANT TO CONFLICT-AFFECTED SOCIETIES?

Civil society organisations enable individuals to unite

around different aspects of their identity, rather than just being identified by their social class, religion, political affiliation or ethnicity. For example, a female Muslim medical doctor with an interest in environmental issues in Bosnia can assert her identity as a doctor through the medical association, her interest in the environment through an NGO, her religious beliefs through the mosque. She is not limited to being identified only as a "Muslim" or a "woman." Through her professional and other interests she is able to interact and establish relations with others in society who may have different religious identities, but similar professional ones. Civil society entities are an important moderating force in society, providing a middle ground between identification through either the state or tribal, familial or ethnic ties (see diagram below). A vibrant civil society can help prevent extremism and a breakdown in relations in societies that have diverse populations, and in which political leaders seek to manipulate support based on identity issues.

internationally recognised. In the "frozen conflict" of **Georgia** and **Abkhazia** in the Caucasus (where there is neither all-out war, nor an agreed framework for peace), Abkhaz civil society—particularly the NGO sector promoting conflict resolution—has greater access to the international community than the *de facto* (but not *de jure*) government of the region, and is thus the communication bridge. While the Abkhaz authorities view the potential influence of the NGO sector with concern at times, they also recognise its importance in maintaining ties with Georgia and conveying the Abkhaz perspective internationally.

The term civil society is often used as though it is, by definition, a positive and forward-looking force, with the capacity to represent the popular viewpoint, and whose strengthening will contribute to the establishment of durable peace. But this is not always the case. First, it is only able to represent those groups that are strong and self-aware enough

Government

- Official state authorities and structures
- Military
- Judiciary
- Administrative units—e.g. town or provincial councils

Civil Society

- Professional associations
- Trade unions
- Community based Organisations
- NGOs—e.g. human rights groups, women's groups
- Charities
- Independent think tanks
- Social movements

Tribal Affiliations/ Family Units and Ties

Bound by religious or traditional values, clan relations, patronage

Where a strong civil society exists, there is greater accountability and civilian interest and participation in governance and political issues. "Impartial information on controversial issues, from human rights violations to corruption, is more likely to be expected from an independent NGO than from a government agency or a business corporation."[3]

This is particularly pertinent where the political leadership of one side of the conflict is not

to become organised, leaving the weaker groups unrepresented.

Second, if it truly represents the full range of public opinion and interests in society, civil society will present viewpoints that may be conflicting and, in some cases, reactionary. To the extent that civil society organisations (CSOs) include nationalist groups or groups that have previously been engaged in violent conflict, it may even emerge as a force for

repression, exclusion or the defence of vested interests. In **Colombia,** for example, peace activists believe that some major corporations establish charitable foundations as façades to detract attention from their links to paramilitary activities.[4]

Third, as long as civil society attracts international funding support, it will not be immune from the political or financial influence that international interests may represent. Moreover, while many civil society organisations are explicitly non-political or apolitical, there are also many that have strong political leanings, or focus on issues that are supported by different actors in the formal political arena.

Fourth, as governments and multilateral organisations draw on civil society to provide services, in many cases people are drawn to the sector because of the potential income they can make, rather than because of their ideology. This is particularly the case with NGOs (see box below). Finally, in many conflict-affected and non-democratic countries, control over civil society is very much in the hands of the state. The state determines which organisations can exist, what issues are addressed, what types of activities and programmes they can develop and how funds (from national and international sources) are disbursed. By definition it means that those groups that are not supported by the government are not permitted to form, become publicly active or gain access to the international community.

Is it possible to establish a strong and dynamic civil society, capable of making government and private

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Women's Involvement in Civil Society

Women's civil society activism in the world has increased steadily since the 1970s (although women's organisations have existed historically). Women's exclusion from formal governing structures—elected or appointed positions—has been a driving force behind their involvement as leaders in civil society. Therefore, efforts that promote the inclusion of civil society in peace processes or democratic systems can translate into larger roles for women. Civil society can be a "back door" into the process when women are blocked access to the formal political process.

"The subordination of women has a long history and is deeply ingrained in economic, political and cultural processes. What we have managed to do in the last few years is to forge worldwide networks and movements, as never existed before, to transform that subordination and in the process to break down other oppressive structures as well… we have acquired skills, self-confidence and the capacity to organise for change."[5]

Through civil society, women have created an autonomous political space where they are free to organise according to their own principles and interests. "Women's interests" can be interpreted in various ways. For some, they are determined by women's supposed essential natures as care givers, so that high on the list of women's interests is the provision of health, education and social services. For others, women's interests are defined by their social positions and the need to defend their rights and would include lobbying for legislation that, for example, enables women to vote or own property on an equal basis with men. For some groups, it is important to focus on 'specific' gender issues such as domestic violence or reproductive choice, while others aim to incorporate their activism within broader political platforms, promoting "a general project of social justice."[6]

These different goals are of course linked; women are not likely to obtain appropriate services unless they have the power to influence decision-making. In many developing countries, women's organisations have stressed the goal of obtaining women's rights as citizens, meaning that their rights to services and their civil and political rights are indissoluble. For example, the Institute of Human Rights Communication in **Nepal** and the Leitana Nehan Women's Development Agency in **Bougainville** work with their governments to raise awareness of women's rights in areas such as domestic violence and women's rights to education.

interests accountable? Civil society normally operates under government legislation and supervision, often using private sector financing. Thus its degree of independence may be limited. Civil society leaders must walk a thin line between constructive challenge and unacceptable opposition, with the risk of being excluded if they are seen as destructive or disloyal. While ideally the government, the private sector and civil society should regulate and monitor one another, in reality civil society is often not sufficiently united and is the least powerful of these groups. As a result, it is often the sector that is targeted first. This is the case both in conflict-affected societies and in countries where democracy is weak.

NGOS AS A GROWING SECTOR IN CIVIL SOCIETY

NGOs are a subset of civil society and represent a growing sector. Between 1990 and 1999, the number of international NGOs rose from 6,000 to 29,000.[7] They have become increasingly significant actors in international development. NGOs engage in a wide array of activities, including undertaking research, implementing projects, advocating and raising public and political awareness about numerous issues. Many NGOs perform all of these activities, using research to develop programs and support advocacy. According to the Commonwealth Foundation, NGOs are characterised by four key features. They are:[8]

1. *Formed voluntarily by citizens*—There is an element of voluntary participation in the organisation, including voluntary staff or board members.

2. *Independent*—NGOs operate within the laws of the state, but they are controlled by their founders and elected or appointed board. The legal status of NGOs is based on the freedom of association—a basic human right. The 1966 International Covenant of Civil and Political Rights, ratified by 152 countries (June 2004), grants the right to assemble (see section below on NGO laws).[9]

3. *Not-for-profit*—NGOs are not for private gain or profit. They can generate revenues, but only to further their mission. NGO employees can be paid for their work. Board members are typically not paid, but do get reimbursed for their expenses.

4. *Not self-serving in aims or values*—The aims of an NGO must be to improve the prospects and circumstances of people and to address issues detrimental to society at large or to particular sectors.

Ideally, NGOs contribute to civil society by promoting pluralism and diversity, advancing arts and science, promoting culture, motivating citizens to engage in civic life, providing services and creating an alternative space from the state for reflection on key social, political and economic issues.[10]

The World Bank classifies NGOs as:

1. **Community-based organisations** (**CBOs**), which serve a narrow and often localised population;

NGOS, GONGOS, BONGOS and MANGOS

In many countries in transition as a result of conflict, non-democratic states and post-communist states, opportunities in the NGO sector have led to increased interference and influence on the part of governments and the private sector. As a result, there are BONGOS (business-organised and -oriented NGOS), GONGOs (governmental NGOs) and even MANGOs (mafia-based NGOs). The links with business are perhaps the most long-standing, particularly in the **United States (US)** where the private sector has a history of philanthropic involvement. The Ford Foundation and the Bill and Melinda Gates Foundation, for example, are major actors in the NGO sector, but they have derived their funds from business. However, there is a distinction between the business component and the NGO work. Foundations such as these operate entirely independently of the business, setting their own agendas, operating under separate management systems and having unique areas of interest. They are not BONGOs.

2. **National NGOs**, which operate in individual countries; and

3. **International NGOs (INGOs)**, which are often headquartered in the developed world but have operations in developing nations.

The Bank has increased its collaboration with NGOs over the past few decades, working directly with national organisations or CBOs, rather than with international entities.

Despite the increased acceptance of NGOs by international institutions, in many societies—those affected by violent conflict and states with limited or no democratic rule—people have difficulty creating formal organisations and asserting their legitimacy. Often by virtue of their activities, NGOs are under constant threat of closure and having their staff arrested. These difficulties stem from the fact that legislation governing NGOs and their relationship with the state, in some cases, is non-existent or weak. To flourish and gain strength, regulations governing civil society organisations and practices relating to trade unions, public gatherings, NGO formation and operation and a host of other related activities, need to be addressed. Typically, in the face of opposition from the government, there is limited opportunity for civil society activists to pursue legislation that protects their activities and independence. When states are in transition, however—either post war or in the process of democratisation—the opportunity to formulate new legislation and acceptance of NGOs does arise and should be taken, otherwise there is a danger that legislation that does eventually pass would make NGO formation even more cumbersome (see box for key issues relating to NGO laws).

Another common dilemma is that tensions exist between national and international NGOs in many countries. In **Pakistan** many INGOs are perceived to be pillars of western values and ideals, with little interest in the needs of people at the grassroots level. In **Nepal** and elsewhere, salaries and resources available to the staff of INGOs are the cause of resentment, particularly when contrasted with the living conditions of ordinary people. In many instances, locals perceive that the programmes of INGOs counteract those of local NGOs, causing tension and mistrust. This competition between

INGOs and local organisations is also evident in the search for international funding and visibility. Many groups are working collaboratively, drawing on the unique strengths and capacities of each entity. Others—particularly those active internationally or regionally—focus their partnership with local groups on building their capacities to operate independently. But the challenge remains and local perceptions and distrust are often exacerbated in crisis situations, when international actors flood a region with money and equipment, overwhelming communities and even draining skilled personnel away from local organisations.

2. WHAT IS THE ROLE OF CIVIL SOCIETY IN PROMOTING SUSTAINABLE PEACE?

Civil society has been active in a variety of fields for decades. The advent of the United Nations (UN) in particular helped forge relations between civil society groups across national boundaries on issues as diverse as education, health, socioeconomic development and human rights. In situations of war, humanitarian agencies have a long history of providing relief, led by the International Committee of the Red Cross (ICRC) movement. On issues relating to peace and security and decision-making around war, broad-based social movements have formed and dissolved for many decades, but focused activism on the part of organisations dedicated to peace and security issues on a global level is a relatively new phenomenon.

During World War I, for example, the Women's International League for Peace and Freedom (WILPF), founded in 1915, was one of the few groups pressing for an end to war, bringing together over 1,000 women from warring and neutral countries. As the oldest women's peace organisation, WILPF remains active today. In the 1930s in **Russia**, women formed a feminist peace movement. The onslaught of the Cold War in the immediate aftermath of World War II left little space for civil society activism on peace issues. This changed gradually in the 1960s when public demonstrations against the Vietnam War in the **US** and **Europe** mobilised a new generation of peace activists. Social movements emerged throughout the 1970s across the world. In **Pakistan,** women mobilised

NGO Laws: Issues to Note

There are numerous issues to consider when developing or advocating for legislation governing NGOs. The following are included among the most important:

1. **Formation**—is based on the right to freedom of association (as noted in Article 20 of the Universal Declaration of Human Rights and other international conventions).

• Any laws pertaining to NGOs must state that they do not need prior permit or licence from the state and must be free of any interference by the public administration or judiciary. The state should have no right to interfere with the creation of an NGO or to impose restrictions on its formation.

• Laws must state that procedures in place to enable NGOs to register must be swift, clear, simple and cheap and should not be at the discretion of the state. In other words, registration forms and processes should not be cumbersome.

• Associations should have their own legal identity, separate from their individual founders.

2. **The Statutes and Bylaws of an NGO**—regarding the purpose and scope of activities should be determined by the founders.

• Laws should explicitly declare that the state should not interfere in this process.

• NGOs should have the right to change their statutes and bylaws without interference from the state.

3. **Management of NGOs**—

• Laws must note that NGOs should be managed according to their own statutes and bylaws without state interference.

• In order to guarantee transparency and credibility, laws should note that organisations must keep accounting books and be independently audited annually.

• Laws should state that there must be no conflict of interest between organisations and their members.

4. **Source of Financing**—

• Laws should state that NGOs have the right to generate resources for their activities using various means, including membership fees, donations, grants and aid from local or foreign entities. NGOs should not be dependent upon their national government for access to foreign aid.

• Laws must allow for tax and duty exemption for NGOs and encourage donations and gifts that are tax-deductible at a reasonable rate. NGOs must be protected by law from state interference as a result of their tax-exempt status.

5. **Controls and Violations**—

• Laws must be explicit in demanding controls and accountability from NGOs.

• No state or public administration can dissolve an NGO.

• NGOs can be dissolved through resolutions passed by their own governing bodies or by a court decision that is based on a fair and public hearing.

Based on the Amman Declaration of May 1999, The Declaration of Principles and Criteria Relating to the Freedom of Association in the Arab World. Available at <http://www.euromedrights.net>.

against the imposition of Islamic laws. In **Africa**, numerous groups supported liberation movements.

In the 1980s, the Western world witnessed organisations dedicated to peace emerging on a notable scale. Although their focus was primarily nuclear proliferation, they nevertheless opened the way for more public activism on issues of war and peace.[12] The end of the Cold War and the parallel rise in internal conflicts and civil war also led to a mushrooming of organisations—best categorised as NGOs—at the international, national and local levels. Many of them either tackle the effects of war, focusing on the resolution of conflict, or work to rebuild post conflict societies.

Since the mid 1990s, NGOs have become key actors in humanitarian aid, post conflict reconstruction and international development. In fact, by the late 1990s, an estimated $11–12 billion was spent by NGOs on these efforts.[13] Whereas in the 1970s and 80s relations between civil society actors (e.g. human rights and development NGOs) and governments were often contentious and confrontational, in the post–Cold War period there has been a significant shift towards partnership and cooperation. In part this is due to the outsourcing of services, where governments draw on NGOs to provide basic services in an effort to lower costs. It is also due to the increasing expertise of NGOs in a variety of different sectors, as well as their access to the grassroots. The capacity of NGOs and other civil society organisations to influence global policies is evident in the successes of efforts such as the landmine ban campaign, debt cancellation and environmental protection advocacy (see below for more examples). However, there are many unresolved issues including:

• the tension that emerges for CSOs when working with governments and donors as partners and are reliant on them for funding, yet seek to guard their organisation's independence; and

• CSO reliance on funding by major institutions or governments that can make their activities donor driven as opposed to beneficiaries/claimant and needs driven.

OBSTACLES TO CIVIL SOCIETY ORGANISING IN CONFLICT-AFFECTED REGIONS

All civil society organisations—including women's groups—face an uphill struggle in war-torn countries. The destruction of resources, physical and psychological impacts of extreme violence, exploitation of existing divisions in civil society by politicians and the prevalence of undemocratic and patriarchal institutions and attitudes create major hurdles. In many instances civil society leaders—particularly those promoting peace, human rights and justice—are directly threatened and often attacked or killed. Ensuring protection for staff and managing fear are critical problems facing many civil society activists and organisations worldwide. In attempting to overcome the fear, women's organisations in **Colombia** have developed a number of approaches, including:

• workshops to help staff manage fear;

• the use of trusted messengers to warn their members and activists about threats;

• gathering to protect those who have been threatened (e.g. standing in front of a person's house, moving together in groups); and

• using symbolic language such as music and flowers when faced with armed actors (the fact that the women lack weapons, "disarms" the armed actors).

The challenge of maintaining relations across conflict lines is another key complication facing civil society entities, particularly when violence increases. Throughout the Oslo peace process, many **Israeli** and **Palestinian** organisations worked together on issues as diverse as health, youth peace education and film-making in an attempt to promote trust and relations among citizens. There were also numerous initiatives bringing Israeli and Palestinian civilians together to talk and build relations. Yet many initiatives faltered following the virtual collapse of the Oslo process in 2000. A lesson for some groups was that it is essential to plan for the bad times and to draw on the range of relations that exist to maintain contact. For some Israeli and Palestinian NGOs, their relations existed on three levels: organisational, professional and personal.

When violence erupts or formal peace talks falter, at the level of civil society there is often pressure on

organisations to sever relations with their counterparts. If professional relations exist, communication can often be maintained and trust promoted (e.g. medical doctors can continue to work together). In other instances, it is the strength of personal relations and ties that sustains and enables the re-establishment of links. While such interactions may not be able to de-escalate the conflict, they are the root and foundation upon which relations can be rebuilt.

Another common challenge facing civil society organisations is that they may not be equipped with the necessary skills and knowledge to represent their members and constituency politically, especially in times of conflict. In addition, civil society entities may be isolated from each other and, in fact, in competition for partnerships with and resources from the international community, particularly donors. In most instances, the bulk of the resources dedicated to post conflict reconstruction are channelled through a handful of multilateral and bilateral organisations.

If civil society groups are not involved in the planning and programmatic development stages, they are likely to be marginalised at the time of implementation. Following the 1992 peace agreement in **El Salvador**, despite plans for a broad-based and inclusive consultation regarding the national reconstruction programme, the NGO community was largely excluded and donors such as the US Agency for International Development (USAID) and the World Bank developed partnerships with government bodies rather than NGOs or social organisations. NGO networks that did participate in the design and implementation of the plan noted that by ignoring local organisations and expertise, potential partners were reduced to being only beneficiaries.[14]

3. HOW ARE WOMEN IN CIVIL SOCIETY INVOLVED IN PROMOTING PEACE AND SECURITY?

Women have often been at the forefront of the NGO sector in promoting and building peace. The oldest women's peace organisation, WILPF, now has branches in 37 countries.[15] In recent times, a strong impetus towards women organising for peace was the 1995 Beijing World Conference on Women. "At the gathering in Beijing, the war in Bosnia and the genocide in Rwanda were fresh in the minds…of many participants…. Although information about…women was still limited…the trends were alarming…. It was of sufficient concern for all those involved to accept that a new chapter should be added to the document [Platform for Action] that focused specifically on women's experience in armed conflict."[16]

The **Beijing Platform for Action** calls on governments to take action on these issues. But in the decade that has followed, civil society has taken the lead. Women's organisations worldwide have emerged, many with a strong focus on peace issues. "From grassroots activism to international networks and campaigns, women…have brought new energy and focus to peacebuilding and have engaged other international and regional policy-making institutions."[17]

Women are motivated to start CSOs for a number of reasons. In many cases where conflict exists, women feel that the political arena is dominated by men and is morally bankrupt, as evidenced by the war itself. Experiencing war firsthand galvanises women to take action, but they may prefer to do so outside the formal political sphere. For many, involvement in women's organisations is driven by their desire to see a just society in which women's voices can be heard. They may prefer to start their own organisations, focusing on particular issues before influencing a wider community. Some women become involved in civil society believing that by mobilising and working collectively, they can create the power to transform the way politics is conducted. Particularly in the context of peace negotiations, women often make strategic use of their identities as mothers and caregivers and the space within civil society to influence male leaders in favour of peace and reconciliation, on the grounds that they are neither political competition nor have a political agenda and seek only to relieve suffering.[18]

Despite their motivations, women in many societies—particularly those dominated by men and determined by familial ties—are reluctant to speak out publicly and lack the self confidence and belief that they "can make a difference."[19] Moreover, even those that do take the step forward can be apprehensive about taking a political stance and

speaking out against factional fighting or violence. However, in many cases where women do take the step forward—with support and training from national or international organisations—with time many become empowered and do enter the formal political arena.

WOMEN'S SOLUTIONS AND ACTIVITIES IN CONFLICT-AFFECTED SOCIETIES

Women's NGOs and others working on peacebuilding face many difficulties as they often address and confront highly sensitive issues.[20] While the challenges are significant, the desire and motivation to bring peace is often stronger. Around the world, women's organisations participate in a wide variety of activities in pursuit of peace, ranging from contributing to development and reconstruction to promoting the rights and participation of women. They have also developed strategies to overcome the many obstacles they face and are active at international, national and local levels.

Survival and Basic Needs: Women's groups may provide food, shelter, medical care, psychosocial counselling, orphan care and programs for the prevention and treatment of HIV/AIDS (see chapter on HIV/AIDS). The Women's Rehabilitation Centre in **Nepal** runs a program to provide psychosocial support and counselling to traumatised women. The Help the Widows Association in **Cambodia** provides microcredit for women to expand their economic activities in agriculture and trade. In Sulaimania, **Iraq**, the NGO, Asuda, works on combating violence against women and children.

Building Trust and Cross-Community Dialogue: In an environment of fear, distrust and no communication, peace activists aim to cross the conflict divide and work together for peace. Building trust and confidence in the opposition can be time-consuming and painful. It involves "truth telling" and acknowledgement of the violence and harm done by both sides. These efforts, however, can draw harsh criticism, opposition and threats from activists' own and/or other communities. Often, if violence escalates, peace activists find themselves torn between the need for immediate loyalty to their community or loyalty to the vision of peace.

Women's organisations build consensus and engagement with the peace process and may also monitor peace accords (see chapter on negotiations). For example, the Réseau des Femmes pour un Développement Associatif (the Women's Network for Group Development) in the **Democratic Republic of the Congo** monitors and denounces violations of women's rights during war and brings women of different factions together in simple shared acts like cooking and dining. In the northern province of Mannar in **Sri Lanka**, informal peace talks were brought about while women were weaving and singing, refusing to heed the communications barrier imposed on them by the conflict.

On a very different level, the international movement, Women in Black, was originally created by Palestinian and Israeli women united for peace. Its branches in the Middle East, the former Yugoslavia, Canada, the US and several European countries undertake non-violent demonstrations such as vigils, campaigns and solidarity visits against war, militarism and other forms of violence in war-torn countries across the world.

In **Northern Ireland,** Catholic and Protestant women began to work with each other on issues of common concern—child care, equal pay, social welfare—that were not directly related to the political and religious conflict that divided them. As they engaged more closely on these "bread and butter" issues, they realised that despite their different religious beliefs, they had a great deal in common, they shared the same fears and had the same hopes for peace in the future. The relations they established and the trust they built through working together on "non-sensitive" issues laid the foundation for their involvement in political and conflict-related issues. In 1996, a network of some 400 women's organisations and community groups came together to support the creation of the Northern Ireland Women's Coalition political party.

Women's groups are also often the key leaders in promoting reconciliation and undertaking community outreach in the immediate aftermath of war. They run peace education programmes, help with the reintegration of soldiers, counsel victims of violence, or train the population in conflict resolution. The Wajir Women for Peace organisation in Northeast **Kenya** mobilised women for peace and, in alliance with other local peace groups, carried out training and mediation in local disputes, quelling many before they broke out into violence.[21] In 2004

in Colombia, various women's groups came together for working groups on women, peace and reconciliation that invited several officials to participate, including a regional mayor, the national peace commissioner and the president's office for women's equality.[22]

Building Capacity and Knowledge: In many instances, the initial motivation to get involved in peacemaking is hampered by a lack of skills or capacity of organisation and individuals to run programmes and interact with policy-makers, funders and other constituents. In many instances, women have little knowledge about their rights under international law. They may lack skills such as strategy development, programme planning, negotiation and mediation, conflict resolution, advocacy, fund raising and communications. In conflict situations, it is often impossible for women to gain access to skills-building programmes or workshops. Travel is difficult and resources are scarce. This can limit the range of activities that women engage in and the sectors they are able to reach.

Recognising the need for extensive capacity building, a number of NGOs have emerged with programmes dedicated to skills building, training and networking. Isis-WICCE (Women's International Cross-Cultural Exchange) in **Uganda** has been a leading force for women in this area. Founded in the 1970s, Isis-WICCE is a major resource centre that collects and disseminates information pertaining to women's rights and development. It has played a critical role in creating regional networks in Africa and bringing the voices of African women to the global arena. In **Afghanistan**, the Afghan Women's Network—with 72 NGO and 3,000 individual members—has led efforts to give women a voice in decision-making, assist their members' efforts to support Afghan women, promote women's and children's rights, build capacities among local organisations through training and to mobilise women to vote.

The Geneva-based Femmes Afrique Solidarité (FAS) has also dedicated its work to networking women's NGOs, providing training in peace and conflict resolution and promoting women's voices internationally. FAS was instrumental in the formation of the **West African** Mano River Union Women's Peace Network, an alliance of women's organisations in Liberia, Guinea and Sierra Leone that has been a critical force for peace in the sub-region.

In **Iran**, the Hamyaran NGO Resource Center provides a mix of technical, managerial and financial support to NGOs across the country. Working to strengthen NGO capacities and networking, the resource centre runs thematic and issue-based workshops for NGOs involved in a wide range of issues including women's rights, the environment and education. It particularly emphasises the need to connect provincial and community-based groups with their urban and national counterparts.

Building Legitimacy Through Networking and Advocacy: In some cases, existing civil society groups and leaders dismiss women's efforts and refuse to engage with them. In addition, women's own lack of confidence, as well as limited knowledge of how to access decision-makers, can hamper their ability to engage directly with political leaders. Coalition building, networking and community outreach efforts are critical to secure women's inclusion in peacebuilding processes and ensure the legitimacy of their voices. The task for women is to identify strategic partners that can give leverage to their work and their voices.

In **Colombia,** following the collapse of the 2002 peace talks, women trade unionists initiated a coalition-building process for peace. The effort was funded by the women's wing of the Swedish Trade Union Movement. Their goal was to produce a collective agenda for peace from a woman's perspective and demand women's inclusion in peacemaking. Over eight months in 2002, 719 women delegates from 266 organisations across the country gathered periodically for 14 local, regional and national events. Starting with a 600-point agenda, the women ultimately prioritised 12 points.[23] The coalition, later named the Women's Emancipatory Constitution, has emerged as a model for promoting ownership, participatory decision-making and consensus building across divergent groups. Their process for reaching consensus is now being replicated by local and regional authorities in their efforts to develop common goals and priorities.

In **Rwanda,** the NGO umbrella group ProFemmes/Twese Hamwe, using the considerable power of its more than 40 member agencies, together with the Ministry of Gender and Women in Development and

the Forum of Parliamentary Women, have formed a strong alliance enabling them to draw on each sector's comparative advantages. Their partnership ensures that the voices of women reach the national level; that new policies are developed to address women's concerns; and that such policies are then utilised by women's NGOs in their work. They have addressed issues ranging from social security and justice to health, decision-making and women's education.

Challenging the Status Quo: Although women are active in peacebuilding at the community level, they tend to be less visible in the national political arena where security issues are addressed. Some fear violence and the stigma of mixing with men and entering "masculine" preserves. For others, the drive to address immediate and concrete issues through civil society channels is stronger than engaging in political processes.

Drawing on their identities as mothers has been a powerful and effective means of addressing issues that are typically dominated by men, particularly security and military affairs. In the 1970s in **Argentina,** Las Madres de la Plaza de Mayo led weekly silent protests, demanding simply to know what had happened to their sons and daughters. Its simplicity gave the movement enormous power and moral authority and their questions directly attacked the secretive and violent nature of the state.

In the 1980s in **South Africa,** women joined with conscientious objectors to protest conscription into the apartheid army. The End Conscription Campaign, led primarily by women, posed a significant threat to the military, yet the state was unable to challenge the moral authority of the soldiers' mothers.

Similarly, during the 1990s when the **Israeli** army occupied southern **Lebanon,** a group of women, including the mothers of soldiers who had died there, began to protest on street corners in Israeli cities. Registering themselves as an NGO called the Four Mothers, their primary goal was the unilateral withdrawal of Israeli troops from Lebanon. The image of the women and their message resonated across Israeli society and generated significant support among men and women. Men were prominent in the leadership of the group, but in the public's perception it was a

movement driven by mothers. Its members became informed of all issues relating to the military presence in Lebanon and attended briefings and meetings with Israeli officials, questioning them and demanding a withdrawal. The strategy to use their identities as mothers was critical to their success, as they faced military officials who were aware of and sensitive to the moral authority that the women brought. Israel withdrew from Lebanon in May 2000. A variety of factors contributed to the final decision, but many credit the Four Mothers for raising awareness and mobilising public opinion in favour of withdrawal.

Fighting Impunity, Advocating for Human Rights: Women's groups may work on specific reconstruction issues such as disarmament, the needs of the displaced, justice and human rights, or more generally collaborate with the media and other allies to promote sound information and awareness. In the **Arab** region, an Iraqi woman has been a key figure in founding the Arab Non-governmental Network for Development, which supports, enables and empowers Arab civil societies in their quest for democracy, human rights and sustainable development. In **Colombia,** the Iniciativa de Mujeres por la Paz (IMP) advocates for the incorporation of women's needs and interests into agendas for peace and negotiations, including reparations for victims of violence and the reintegration of women former combatants. In **Guatemala** and **El Salvador** a number or women's organisations emerged during the war years that fought against impunity for crimes committed against civilians. Their struggle to implement and strengthen international and national laws was fundamental in the search for sustainable peace with justice (see chapters on transitional justice and human rights).

Promoting Women in Decision-Making and Leadership: Women's organisations may work to promote women through their participation in political parties and in elections or in professional life. In **Cambodia,** a former woman refugee founded Women for Prosperity (WfP) with the goal of promoting women's political participation (see chapter on democracy and governance). These efforts also bolster women's confidence and help instill a belief that they, as individuals and collectively, can make a difference to their communities and societies at large.

Mobilising Resources to Support Peace Work: The lack of financial security—for short-term work or long-term strategies—is a fundamental obstacle facing women's organisations. Many are heavily affected by poverty, the excessive demands on their time and resources, domestic violence and the loss of social services. Despite these factors, many members work as volunteers. Such challenges affect the creation and sustainability of organisations and make them dependent upon the funding they are able to secure. A USAID study of women's organisations in **Cambodia** found that they faced a general problem of continued dependence on international donors, making them vulnerable to short-term planning and to changing international policy priorities.[24]

Some women's groups have developed innovative strategies to tackle this ongoing challenge. While some have built their capacity for finance and budgeting to ensure effective management of funds, others have joined with partner organisations to request grants that best utilise each group's abilities and resources. Many women's organisations hone in on particular issues to capitalise on their expertise and to avoid over-extending themselves. Others build their knowledge about international donors and their in-country programmes to match their expertise with national and international needs and priorities. In **El Salvador**, for example, USAID reported that NGOs, including women's groups, were among the best at implementing programs because of their access to remote populations.[25]

National and local-level women's organisations often benefit from forging links with international civil society groups. As mentioned above, the women's arm of the trade union in Sweden funded a coalition-building programme for women in **Colombia**'s trade unions and beyond. Working globally, Women for Women International, based in the US, provides tools and resources for women in post conflict countries, including **Bosnia, Iraq** and **Rwanda,** with the goal of strengthening civil society at the local level. A Rockefeller Foundation–funded program, Afghan Women Leaders Connect, links individual women in **Afghanistan** with women leaders in the US and Canada, providing grants and training to Afghan women leaders. With international donors increasingly directing funds to national NGOs, women's organisations working at national and local levels are well placed to benefit from the shift, particularly in times of conflict (see chapter on post conflict reconstruction).

4. WHAT POLICIES EXIST TO PROMOTE CIVIL SOCIETY INVOLVEMENT IN PEACEBUILDING?

NGOs are recognised as an important entity in the UN's original charter. Article 71 says that the Economic and Social Council (ECOSOC) "may make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence."[26] In addition, Article 21 of the International Covenant on Civil and Political Rights (1966) states the right to peaceful assembly and Article 22 grants the right to freedom of association.

The UN established the Non-Governmental Liaison Service (NGLS) in 1975 with offices in Geneva and New York to provide information, advice, expertise and support services to civil society regarding UN activities.[27] NGOs have four types of status with the UN:

1. NGO consultative status with ECOSOC through the Department of Economic and Social Affairs; it allows direct participation in intergovernmental processes covering a broad range of socioeconomic issues, subdivided into three groups:

    • General: NGOs concerned with a broad range of ECOSOC issues;

    • Special: NGOs with special competence in a few fields of activity; and

    • Roster: NGOs with narrow or technical expertise in a field.

2. Department of Public Information status, which permits access, but not participation;

3. Media status for members of the press; and

4. Other status, which allows for participation in single events or conferences.

In addition to focusing on social and economic issues, NGOs are eligible for consultative status with ECOSOC if they:

• have democratic decision-making mechanisms;

• have been in existence for at least two years with appropriate governmental registration;

• obtain their basic resources from contributions by national affiliates, individual members, or other non-governmental entities; and

• commit to producing a report of their activities every four years.

The UN and other agencies have provided significant support for women's organisations over the last 30 years. The 1979 **UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** and the 1995 **Beijing Platform for Action** have been critical tools for promoting women's activism in civil society and peace issues. To monitor implementation of the Beijing Platform, the **Commission on the Status of Women (CSW)** was established by ECOSOC. The CSW meets annually for ten days, usually in New York at UN headquarters and produces an official report with recommendations.[28] In recent years, peace and security has become a priority on the agenda of the CSW. NGOs with ECOSOC status and with passes for the conference are permitted to attend the meeting and use the time to network and lobby governments on critical issues. These forums enable global policy-makers and the people who are most affected by their policies to communicate and cooperate better. They also demonstrate the depth of knowledge, experience and skills in civil society that, when tapped and supported, are major agents of change. Agencies within the UN dedicated to women's issues—including the **UN Development Fund for Women (UNIFEM)**, the **Division for the Advancement of Women (DAW)** in the Department of Economic and Social Affairs and the **Office of the Special Adviser to the Secretary General on Gender Issues and Advancement of Women (OSAGI)**—are also integral to the engagement of women's organisations with the UN.

Regarding peace and security specifically, two international laws exist promoting civil society participation and support:

• **UN Security Council Resolution 1325** (2001) explicitly calls for "support [to] local women's peace initiatives and indigenous processes for conflict resolution;" and

• **UN Security Council Resolution 1366** (2001) articulates "the important supporting role of civil society" in promoting national-level conflict prevention.

In addition, as part of a major reform process within the UN system, the role of civil society is being addressed at the highest levels. The Secretary General convened a high-level panel to issue a report on how to improve civil society relations with the UN, launched in June 2004. One of their recommendations is: "…the establishment of a dedicated fund for civil society engagement…to strengthen the capacity of underrepresented groups to engage with the United Nations, especially women, indigenous peoples, disabled people and the poor."[29] In conjunction with the report's release, the Security Council discussed the role of civil society in post conflict peacebuilding for the first time and many governmental and non-governmental representatives spoke on record, acknowledging the critical role of NGOs in post conflict reconstruction and the need for increased civil society partnership with the Security Council.[30]

The trend to include civil society in discussions and activities related to peace and security has extended to the regional level. The **African Union**, in Article 20 of the protocol to establish its Peace and Security Council, notes that it will "encourage non-governmental organisations, community-based and other civil society organisations, particularly women's organisations, to participate actively in the efforts aimed at promoting peace, security and stability in Africa."[31] Furthermore, civil society is invited to participate in all open sessions of the Council. The **Organization of American States (OAS)**, through a Permanent Council resolution, recently established a fund to support the participation of civil society organisations in OAS activities and conferences. All groups registered with the OAS must submit a letter of application to the Secretariat to be considered for such grants. Every regional organisation has its criteria for enabling NGOs to gain accreditation and access to their processes.

Nationally, for NGOs everywhere, a key challenge is pressing governments and formal political parties to implement international laws, conventions they have adopted and commitments they have made. Another challenge is changing national policies to enable NGOs to work in equal partnership with state authorities in providing basic services, such as health or education programmes.

5. TAKING STRATEGIC ACTION: WHAT CAN WOMEN PEACEBUILDERS DO?

1. Before creating an NGO, do a mapping of civil society activities to avoid duplication. Aim to complement existing efforts. Be clear about the goals of the new organisation and its position vis-à-vis other civil society entities and the government.

2. Develop an agenda and mandate that represent the needs of a broad-based constituency with roots in the community, overcoming the factors that divide them.

   • Place international human rights and women's rights at the core of your activities and seek to realise them in ways that are culturally relevant.

3. Seek out other groups and create a coalition or alliance based on a common set of principles and values. In this way, unity can be strengthened without impinging on the individual areas of work or interest of each group.

4. Establish a national civil society forum that advocates for legislation in support of NGO formation and that can be a focal point for resources, including technical and management expertise.

5. Develop a common agenda and priorities for action. Where possible, use this as a base for advocacy and fund-raising with donors.

6. Develop an alliance with government and parliamentary entities to gain access to decision-making levels.

7. Aim to develop a common NGO endowment fund accessible to affiliated NGOs.

8. Identify the informal and traditional structures through which women can assert their influence and seek to strengthen them.

9. Document your activities and results in order to share the lessons with other women peacebuilders.

10. Draw on international policies and laws such as UN Security Council Resolution 1325 to raise awareness about women's roles in peace and security.

WHERE CAN YOU FIND MORE INFORMATION?

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ACRONYMS

BONGO	Business-Organised and Oriented Non-Governmental Organisation
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CBO	Community-Based Organisation
CSO	Civil Society Organisations
CSW	Commission on the Status of Women
DAW	Division for the Advancement of Women of the United Nations
ECOSOC	Economic and Social Council of the United Nations
FAS	Femmes Afrique Solidarité
GONGO	Governmental-Focused Non-Governmental Organisation
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
ICRC	International Committee of the Red Cross
INGO	International Non-Governmental Organisation
Isis-WICCE	Women's International Cross Cultural Exchange
MANGO	Mafia-Based Non-Governmental Organisation
NGLS	Non-Governmental Liaison Service
NGO	Non-Governmental Organisation
OAS	Organization of American States
OSAGI	Office of the Special Adviser to the Secretary-General on Gender Issues and the Advancement of Women of the United Nations
SAFHR	South Asia Forum for Human Rights
UN	United Nations
UNIFEM	United Nations Development Fund for Women
USAID	United States Agency for International Development
WfP	Women for Prosperity

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