Legislating Gender Based Violence in Post-Conflict Africa

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Abstract

Much of the literature on post-conflict Africa has focused either on backlash regarding women's rights or referred very generally to new openings for gender related policy in particular countries. A closer look at developments across the continent shows that the steady demise of a significant number of major conflicts in Africa since the mid-1980s and especially after 2000 has been accompanied by a new focus on women's representation and woman-friendly legislation and policy. This article focuses on the adoption of gender-based violence legislation, which has not to date been examined crossnationally. It argues that post-conflict countries have adopted legislation pertaining to gender based violence (GBV) at significantly higher rates than have non-post-conflict countries. The article shows how this is related to the legacy of conflict. The pressures to address GBV have come from 1) women's movements, 2) changing international norms and practices reflected in programmatic shifts within international bodies like the United Nations as well as foreign donors, and 4) changing opportunity structures such as the holding of peace talks or rewriting of constitutions, which allowed women to push their agenda.

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The steady demise of a significant number of major conflicts in Africa since the 1990s and especially after 2000 has been accompanied by a new focus on women's legislative representation as well as woman-friendly legislation and policy more generally. There has been acknowledgement that post-conflict countries are often very likely to adopt

legislative quotas for women (Bauer and Britton 2006; Zuckerman and Greenberg 2004, 71) and to increase rates of female legislative representation (Hughes 2009; Luciak 2006, 6). However, there has been less written about the adoption of other policies beyond the issue of quotas. This article explores one important area of legislative change: that of gender based violence (GBV).

While still slow in coming, legislation pertaining to GBV has been vigorously debated and adopted in many post-conflict countries at significantly higher rates than in non-post-conflict countries. In fact, post-conflict countries have passed on average twice as much GBV related legislation when compared with non-post conflict countries (Table 1). This is a result of pressure from women's movements and organizations, changing norms and practices by international organizations and bodies as well as foreign donors, and changing opportunity structures, such as the fact that women's groups were able to ensure the inclusion of gender-related clauses into peace agreements and into newly rewritten constitutions. Earlier wars of national liberation against the Portuguese, French and British, had not produced the same kinds of outcomes that were seen at the end of civil conflict in Africa after the 1990s, mostly because the normative sensibilities regarding GBV began to change only as recently as the 1980s. This change in global norms was heavily influenced by African women's movements in the areas of female genital cutting, rape during conflict, and treatment of the girl child (Copelon 2000, 225; Snyder 2006, Tripp et al. 2009).

These trends are especially evident in countries that came out of conflict after the 1990s because of an increase in the number of conflicts that diminished in intensity or came to an end in Africa. These trends actually began around the mid-1980s with the decline of conflict in Uganda that occurred with the takeover of Yoweri Museveni in 1986. This represented a turning point with respect to women's advocacy in post-conflict situations. However the patterns were not pronounced until after 2000 (Meintjes 2001, 72; Pankhurst 2003; Tripp 2000; Tripp et al. 2009, Turshen, 2001, 80). The decline in conflict was due to

the heightened intervention of peacekeeping troops; the increased use of peace diplomacy and other concerted efforts like peace negotiations; pressure from civil society and peace movements, and the end of the Cold War and its related proxy wars. Thus, major peace settlements occurred after the end of national wars of liberation in Namibia and South Africa. Civil conflicts declined in intensity or ended in countries such as Angola (2002), Burundi (2004), Chad, (2002), the Democratic Republic of Congo (2002), Liberia (2003), Mozambique (1992), Rwanda (1994), and Sierra Leone (2002). The decline of conflict in these contexts paved the way for new pressures to address women's rights concerns (Gurr 2000, Human Security Centre 2005).

Much of the literature on post-conflict countries to date has focused on backlash against women after war (Kelly 2000; Meintjes et al. 2002; Turshen 2001; Pankhurst 2003; Pankhurst and Pearce 1997). While this may explain some contexts, it does not necessarily capture the overall patterns one sees in Africa today with respect to the advancement of women's rights in Africa. For example, one finds that many of the countries most open to constitutional and legislative changes regarding women are countries where there has been a significant decline in conflict in recent years. Many sub-Saharan countries have introduced constitutions and legislation in which customary law is overridden by the constitution and by statutory law, with important implications for women's rights. Ten out of 13 post-conflict countries have such constitutional clauses whereas only eleven out of thirty-two non–post-conflict countries have such a provision. In Article 33 of the 1995 Ugandan constitution, for example, it states that "Laws, cultures, customs and traditions which are against the dignity, welfare or interest of women or any other marginalised group . . . or which undermine their status, are prohibited by this Constitution." Similarly, all post-conflict countries have provisions barring discrimination based on sex, whereas only twenty-five out of thirty-two non-post-conflict countries have this provision. Some of the most explicit wording regarding women's rights can be found in post-conflict constitutions (Tripp 2008).

I am using the term "post-conflict" to describe situations where there have been a significant decline in the numbers of deaths related to conflict (roughly less than 1,000 battle related casualties per year)[1] and where there has been a decline in hostilities. This does not imply that violence has ended or that women, for example, do not continue to face heightened insecurity in their homes or communities. Sometimes, the forces that are supposed to be "protecting" civilians, like peacekeeping troops, have themselves been sources of insecurity and GBV.

By GBV I am referring to physical, sexual or mental harm that targets a specific group with gender serving as a primary motive, e.g., domestic violence, sexual violence, female genital cutting, and trafficking. The term refers to the social nature of violence and the gendered power relations embedded in violence.

This article examines why legislation pertaining to GBV has been particularly important in post-conflict countries. It first documents some of the changes evident in these countries with respect to legislation pertaining to GBV more generally, sexual violence, and domestic violence. It then explores the reasons for these changes, concluding with a discussion of the constraints on implementing these laws. This article regards legislation as a necessary and important step in addressing GBV, but sees many other interventions as necessary to realizing the implementation of such policies. Legislation alone is insufficient to ensuring that women's rights are protected.

The study is part of a broader study of women's rights in post-conflict Africa, based on fieldwork in Uganda, Liberia, Angola and Democratic Republic of Congo, involving interviews with hundreds of women's rights activists and government officials, as well as a quantitative study of patterns of legal change regarding women's rights throughout Africa, contrasting post-conflict countries with those that have not experienced major conflict.

[1] The Peace Research Institute Oslo (PRIO), Correlates of War and many political scientists define a civil war as at least 1,000 casualties per year.

Legislative Changes Regarding GBV

Gender-based violence has become one of the most important areas of new legislative provision in Africa, representing a normative shift in thinking about women's rights. Much of this changing in thinking regarding GBV came out of experiences within conflict that heightened awareness of the severity of the problem. For example, one of the most important rulings that helped shatter prevailing norms about gender violence, not only in Africa, but globally, was the judgment against former mayor Jean-Paul Akayesu delivered by the Trial Chamber of the International Criminal Tribunal for Rwanda (ICTR) in 1998. For the first time in history, rape and sexual violence was explicitly recognized as an act of genocide and a crime against humanity." It was the first ruling to regard a broad definition of rape involving a sexual physical invasion beyond merely a narrow description of penile penetration of the vagina and to regard rape as a form of torture (Copelon 2000, 227).This ruling has made it possible for countries like Burundi to introduce laws like the 2003 Law (No 1/004/2003) which penalizes the crime of genocide, war crimes and crimes against humanity, including rape, sexual slavery, enforced sterilization or any other form of sexual violence. The ICTR Akayesu ruling helped irreversibly change the way people thought about GBV during conflict (Copelon 2000). It was part of a long series of legal efforts to shift the normative ground regarding women and their rights to bodily integrity both during but also after civil conflict.

Table 1.

GBV Legislation Passed in Countries That Have Not Experienced Major Conflict					
	Sexual harassment	**Domestic violence**	**Marital rape**	**Sexual violence**	**Trafficking**
Benin	2006	2003			
Botswana	1999	2008		1997	

Burkina Faso	2004				2008
Cameroon					2005
Cape Verde	yes	2004			
CAR	yes	2006		2006	2009
Comoros		yes			
Congo-Brazzaville			yes	1948	2009
Cote d'Ivoire	1998				
Djibouti					2007
Equatorial Guinea		yes			2004
Gabon		yes			2001
Gambia	yes				2007
Ghana		2007			2005
Guinea				1994	2002
Guinea-Bissau					
Kenya	2003			2006	
Lesotho	1992	yes	yes	2003	
Madagascar	2000	2000		2000	2007
Malawi		2006			
Mali					
Mauritania		yes			2003
Mauritius	2008	1997			2009
Niger	yes				
Nigeria			yes		2003
Sao Tome & Principe			yes		yes
Senegal		1999			

Seychelles		2000	yes		
Sudan					
Swaziland			yes		
Tanzania	1998			1998	2009
Togo		yes			
Zambia	2005				2008
Zimbabwe		2007		2001	2001
GBV Legislation Passed in Post-Conflict Countries					
Angola			yes	yes	
Burundi	2009	2009	2009	2003	2009
Chad		2002		2002	
DR Congo	2002			2006	2006
Eritrea	yes	yes		2009	2004
Ethiopia	2005	2005			2004
Liberia		2008		2006	2005
Mozambique	1920s	2009	2009		2008
Namibia	1992	2003	2000	2000	
Rwanda	2008	2009	2008	2008	2008
Sierra Leone		2007		2007	2005
South Africa	1998	1998	2007	2007	
Uganda	2006	2009			2008

Source: UN Secretary General's Database on Violence Against Women http://webapps01.un.org/vawdatabase/searchDetail.action?measureId=10221; Womanstats; LexisNexis.

Domestic Violence Legislation

To date, 28 African countries have passed legislation around domestic violence. Eleven out of 13 post conflict countries have adopted such legislation, while one half of the

non-post conflict countries have such legislation (Table 1). Similarly, half of post conflict countries have legislation prohibiting marital rape, while less than one-fifth of countries that have not experienced major conflict have such legislation. Gradually, perceptions of domestic violence have begun to change. Women's organizations, and now increasingly the legislature and courts, are challenging the view that it is simply a private family matter that does not necessitate public scrutiny. In some countries, wife battery has been justified on cultural grounds and even been regarded as a sign of a husband's devotion to his wife. Women's experiences during conflict helped foster an awareness of the need to end domestic violence and to use legal means as one tool to end such violence.

Women in Sierra Leone won a major victory in 2007 when a new law made wife beating a criminal offense. The law applies a broad definition of domestic violence. It includes "physical or sexual abuse, economic abuse, emotional, verbal or psychological abuse, harassment, conduct that harms, endangers the safety, health or well-being of another person or undermines the privacy and dignity of another person." The law also establishes Family Support Units to educate police on sexual and domestic violence, work with rape survivors, ensure forensic testing, and help process cases. A Commonwealth Police team has provided training to help police to work with the community, to carry out mediation, and to support women who decide to press charges. Local women's organizations are seen as key to seeing that the new law is implemented ("The Status of Women . . . ." 2005).

Similarly, the first piece of legislation, for example, introduced into the Rwandan parliament after the enactment of the 2003 constitution was the Prevention, Protection and Punishment of Any Gender Based Violence bill. The legislation was adopted 3 August 2006 and went into effect in 2009.

Sexual Violence Legislation

All countries in Africa have anti-rape legislation, although in some countries it is fairly non-specific. Virtually all post-conflict countries have adopted new legislation specifically addressing sexual violence since 2000 (in contrast to 5 out of 35 non-post conflict countries that did so). In Congo for example Law no. 06/019 amending Code of Criminal Procedure (2006) requires that "matters related to sexual violence be dealt with in the criminal justice system within a period of three months; provides for closed hearings in cases of sexual violence; and states that the credibility, honor, or sexual availability of the complainant/survivor may under no circumstances be inferred from their previous or later sexual behavior" (UN Secretary General's Database on Violence against Women, Accessed June 24, 2010).[2]

At least 27 countries have set an age of consent to sexual relations, generally between the ages of 14 and 16, below which sex is regarded as rape. The rape of children and teenagers is of grave concern in most countries, especially post-conflict countries, where the breakdown in societal norms has been extensive. At least 70% of post-conflict countries had adopted anti-trafficking legislation, while only half of non-post conflict countries have done so. Similarly, 70% of post conflict countries have passed such legislation addressing sexual harassment while only 40% of non-post conflict countries have done so (Table 1).

In recent years, half post conflict countries adopted spousal rape legislation. Less than one fifth of non-post conflict countries did so. Sierra Leone set a precedent in 2004 when for the first time in international law a court in Freetown prosecuted cases of forced marriage as a crime against humanity in 2004. Sierra Leone also passed an Anti-Human Trafficking Act in 2005 to stem a burgeoning external trade of girls as domestic and sex slaves under the pretext of adoption (Sessay 2007, 17). In Uganda one of the first laws

[2] http://webapps01.un.org/vawdatabase/searchDetail.action?measureId=10221

regarding women enacted after the cessation of civil conflict in 1986 had to do with rape (called defilement) of girls under the age of 18. The penalty of death that the crime carries has not only been challenged by human rights organizations, but has resulted in few convictions.

During and after the conflict in Liberia, which ended in 2003, rape was a common form of violence. A survey by the World Health Organisation in Liberia found that 75 percent of the respondents reported having been raped during the conflict ("Liberian men and women . . . ." 2006). In Liberia, rape legislation was adopted in 2005. Prior to this, only gang rape had been considered a crime. Members of Association of Female Lawyers of Liberia (AFELL) drafted the legislation, which strengthens penalties for rape, making it a non-bailable offense, carrying a sentence of 10 years for rape of a woman and life imprisonment for rape of a minor. It raises the age limit for statutory rape to 17 and recognizes that rape was not perpetrated only against females. It defined rape beyond penile penetration to account for the use of gun butts and other horrific forms of terror. AFELL organized radio programs and held public fora to publicize the bill (International Crisis Report 2006).

Médecins Sans Frontières reported in 2009 that the incidence of rape was increasing in Liberia in the aftermath of war and was affecting girls in particular. Approximately 85 percent of the 658 reported rape cases at a Monrovia hospital were under 18, and 48 percent were between 5 and 12. Even baby girls were being targeted. Over 90 percent of the children were raped by an acquaintance. However, as of March 2007 there had been only two rape convictions. Both women's organizations and the government have been concerned about the lack of prosecutions, which are related to a number of factors. Alleged rapists were sometimes put in jail cells without being charged and then courts were freeing them because they had failed to prosecute them within the required 48-hour period. Sometimes poverty, cultural norms and stigmas relating to rape led parents to extort

money from the alleged rapists to settle the matter. Another possible reason for the lack of prosecutions is that the penalty of conviction of rape of a minor is too high from a societal perspective, creating a disincentive to prosecute. Rape of a minor carries a life sentence. Few rape survivors report cases due to the stigma associated with it. If the overwhelming majority of raped children have been raped by acquaintances, this may have had served as a further deterrent to charges being filed. Moreover, there is no guarantee that the police would treat the rape survivors with dignity and respect, creating additional disincentives to report ("Human Rights Problems . . . " 2007, "Government, Women's Group . . . " 2007, "Survey on Rape . . . " 2006).

Finally, the weakness of the security apparatus and justice system has resulted in cases of mob justice and excessive violence by security officers being directed at suspects. These weakness is in the criminal system has led women's rights activists to point out that more community education is required regarding sexual assault.

Reasons for New Emphasis on GBV in Post Conflict Countries

There is no single factor that explains why countries coming out of conflict have been more attentive to GBV than non-post conflict countries. Rather, we need to consider multiple factors. These range from women's experiences with GBV during conflict and their mobilization around these concerns; the simultaneous rise of women's movements in Africa more generally in the 1990s; changing donor strategies at this time that addressed GBV more aggressively; and changes in opportunity structures in the aftermath of conflict which allowed women to advance their demands in peace talks, constitution making exercises and other fora. For example, women's rights language was included in 86% of the peace agreements in Africa between 1989 and 2005 (Anderson 2010). The increase in female legislative representation after the 1990s, which was especially pronounced in post-conflict

countries, meant that there were more women in parliament who tended to be more attentive to GBV legislation.

Rise of Women's Activism

Autonomous women's movements emerged throughout Africa in the 1990s, which served as catalysts for many of the constitutional and legal challenges discussed in this article. They emerged in response to changing international norms regarding women's rights, as a result of diffusion of influences at the international level, e.g., UN conferences on women in Nairobi (1985) and Beijing (1995) as well as throughout Africa. New donor strategies also provided new resources to emerging organizations, while democratizing trends provided the necessary political space in many countries. They frequently brought women together around a common women's rights agenda, cutting across political parties, ethnic, religious, clan and other divisions. These movements had new priorities, new agendas, new leaders, and new sources of funding independent of state patronage networks, which older women's organizations had depended on to a greater extent. In war-torn countries, the movements often focused on peacemaking as a central concern.

GBV was another related agenda that emerged out of conflict as large numbers of women faced the violence of rape, kidnapping and sexual abuse. The increased reliance on diamonds, oil and other resources in African conflicts led to extreme violence against civilians and exacerbated GBV. In such countries one found extreme human rights violations, abductions, use of child soldiers, child sex slavery, decapitations, amputations and sexual violence. Jeremy Weinstein (2006) has shown how rebel groups that rely on external or readily available resources to support their insurgency are far more violent in their tactics that those that rely on the local population to sustain themselves.

Women's movements in Africa mobilized around peace issues not only domestically but also through regional and subregional networks. Women coordinated their activities across state boundaries on an unprecedented scale. Peacemaking has been a central concern of networks such as the African Women's Committee for Peace and Development (AWCPD) and the Federation of African Women's Peace Networks (FERFAP). FERFAP, formed in 1997, includes representatives from sixteen countries and has been involved in activities ranging from petitions and peace marches to local alliance building and national reconciliation conferences (Manuh 1998). Perhaps most significantly, the importance of women's participation in peace initiatives has gained recognition from African governments not previously evident in the post-independence era. This had, in part, to do with a normative shift that had taken place globally with respect to women's rights, as evident in the passage of UN Security Council Resolution 1325 in 2000. The Security Council adopted Resolution 1325 to provide women with a greater role in conflict prevention and resolution, part of which involves addressing GBV.

Changing International Norms and Practices

Violence against women has resulted in considerable regional and international mobilization, especially after the 1995 Fourth World Conference on Women in Beijing. African countries have been at the forefront of many of these concerns and have helped set new precedents within international law as well. United Nations agencies also put pressure on governments to address women's rights in a concerted manner.

Similarly, at a regional level the 2006 SADC protocol on gender and development sets targets relating to GBV to be met by 2020. All member states were to have in place legislation on gender based violence, domestic violence, human trafficking and sexual offenses by 2008 and this legislation is to be enacted by 2010. Perpetrators of domestic violence, marital rape, femicide, and other forms of GBV are required to be brought to

justice in a court of competent jurisdiction. Those in the criminal justice system must be educated about these laws and steps must be taken to eradicate traditional customs that perpetuate violence against women and children.

Donor influences have also been evident in efforts to address GBV. Women parliamentarians, for example, in Rwanda were heavily supported by foreign donors as they drafted and advanced their GBV bill. They received support from the United Nations Development Program, Britain's Department for International Development (DFID), Women Waging Peace, the Swedish Development Agency (SIDA), UNIFEM and the African Development Bank (Pearson 2007, 68). Rwanda itself has been able to buy considerable good will from the international community, in spite of its dismal post-RPF human rights record, because of its promotion of women in the political arena (Burnett 2008, 371). Its major donors include the World Bank the United States, European Commission, United Kingdom, Netherlands, Belgium, Sweden, Germany, African Development Bank, and France.

In a 2005 survey of 401 gender-based organizations around the world, including 94 from Africa, the Association for Women's Rights in Development (AWID) found that the largest number (39 percent) in Africa had been formed between 1990 and 1999 and another 32 percent were formed between 2000 and 2005. In terms of issue areas, 72 percent of the respondents from Africa said the easiest areas to obtain funding were health concerns related to AIDS (72 percent), gender-based violence (47 percent) and civic/political rights and participation (45 percent) (Clark et al. 2006: 79, 135). Similar patterns are evident in post-conflict countries as well. Post-conflict countries, generally, are in most need of external support and therefore are most open or vulnerable to external pressures and influences.

Changing Opportunity Structures

Changing opportunity structures allowed women's organizations to intervene in new ways to assert their concerns. Opportunity structures are structural factors outside of the movements themselves that limit — or in this case — facilitate social movements. The holding of peace talks, the holding of elections, as well as constitution writing exercises allowed women opportunities to press their new demands. In Burundi, for example, the Women's Proposals to Engender the Draft Arusha Peace and Reconciliation Agreement provided a road map for how women saw that their concerns needed to be addressed in the peace building process. They insisted that women be represented in all aspects of the peace process and that all issues needed to be looked at from a gender perspective. The declaration highlighted called for an end to impunity when it came to rape, sexual violence, prostitution and domestic violence. The document mentioned the importance of paying attention to the needs of women refugees and in particular female-and child headed families, educating women and girls, and many other crucial concerns. They demanded a 30 per cent quota for women in the legislature, the judiciary and the executive branches of government, as well as in all bodies created by the peace accord. They argued that rights to property, land and inheritance be included in the final agreement along with a recognition of the fact that Burundi girls and women suffer discrimination because of culture and policies that are not sensitive to women's particular needs (All-Party Burundi Women's Peace Conference 2000). Twenty-three of these recommendations were ultimately included in the final peace accord as a result of their lobbying efforts. Many of these demands were gradually implemented, including the reservation of 30 percent of parliamentary seats for women while new legislation regarding women's status was introduced. Similar trends were evident in other countries where women took advantage of these opportunities.

Challenges in the Implementation of Legislation

The adoption of legislation is only a first step in the process of addressing GBV. The implementation of policy is a much greater hurdle. One of the legacies of years of civil conflict has been the erosion of the justice system. In a country like Liberia the perpetuation of the culture of corruption and impunity that led to 14 years of civil war continues to paralyze the justice system and threatens the peace, according to the International Crisis Group (ICG). The ICG's 2006 study of Liberia's justice system found that the temporary measures that have been adopted to revive the legal system cannot substitute for a major overhaul of the legal system (International Crisis Group 2006). In 2003, the Security Council gave the Legal and Judicial System Support Division (LJSSD) of the UN Mission in Liberia (UNMIL) authority to oversee judicial reform during the transition. Although some progress was made, there is still a long way to go in reforming the legal system, which is a combination of U.S. common law and customary law run by chiefs, councils of elders and local administration. There is a need to reconcile statutory and customary legal systems by creating a system of appeals that would allow appeals to go from the customary courts to the statutory courts; provide executive oversight of customary law; and support the training and support of judges.

Many of the requirements for reviving the legal system are fairly mundane but absolutely essential. Courts, police stations and prisons need supplies of basic equipment for improved file management and recordkeeping, in order to ensure fair trial standards. Presently detainees remain imprisoned for long periods of time due to a lack of personnel and proper documentation. The conditions in jails and prisons also need significant improvement ("Human Rights Problems . . . 2007). Lack of funds has meant that courts have stopped functioning in many parts of the country or hearings are held in alternate locations because the court buildings have been destroyed. Low salaries of judges lead to

corruption. They often lack the necessary legal texts to carry out their work. Beyond this, women and men in Liberia and elsewhere need to be educated about their rights and given the means by which to exercise them. Legislative changes are insufficient without providing women with the knowledge and capacities to make use of existing laws. These challenges facing Liberia's legal system are typical of post-conflict countries in Africa.

Another issue confronting legal systems in Africa has to do with the "harmonization" of general law with customary law, which has become one of the main goals of women's movements. The aim is to eliminate various tiers of rights accorded women who have differential access to education, knowledge of legal rights, and resources. While some of the arrangements like the three categories of marriage contracts in Rwanda may be unavoidable as temporary transition provisions, ultimately women are not served by creating systems of differential access to rights.

Current pressures for legislative change have had to contend with some of the peculiarities of contemporary African legal systems, which are the product of a plurality of legal legacies originating during colonial rule. These legal legacies have shaped efforts at legislative reform in post-conflict countries. Contemporary laws build on colonial common law traditions in former British colonies and civil law traditions in former French, Portuguese, Belgian, German, Italian, and Spanish colonies. These legal systems have coexisted at different levels of comfort with customary law.

Beyond what is codified in terms of the relationship between formal and customary law, the practice of law may diverge to an even greater extent so that even where there is a clear demarcation of jurisdiction between customary and general law, informal courts and customary law prevail beyond their legal bounds. The decline of formal courts and the erosion of the rule of law as a result of civil war has exacerbated this problem.

A recent study in Sierra Leone showed that chiefs ruled on a wide range of cases that went well beyond their jurisdiction. For example they systematically ruled against women when it came to matters pertaining to personal status, marriage and inheritance, even though since the Courts Act, 1963, the Local Courts, which are under the Statutory Court, are the only body allowed to adjudicate in matters of customary law. The local courts were to replace the chiefs in this role after independence. There frequently has been collusion between parties and chiefs that works against women who are not connected to or do not have the resources to pay off the chiefs. Women are often treated as minors to be protected by their fathers, sons or other male family members. Customary law, which is largely unwritten in Sierra Leone, is protected by the 1991 constitution, however the constitution prohibits discriminatory law. Moreover, in the event that there is a clash between customary law conflict and common law, common law takes precedence. Sierra Leone's constitution limits the areas in which the chiefs can adjudicate and in particular limits the extent to which they can influence matters that have to do with adoption, marriage, divorce, inheritance and property. However the chiefs, local authorities and people themselves are often unclear on the jurisdiction of the chiefs. Paralegal and legal aid organizations provide some assistance in providing legal assistance and mediating between family members and holding education workshops for communities. But the larger problem of harmonizing customary and statutory laws and courts remains.

These historical legacies pose enormous challenges for women's rights activists who now are trying to find ways to harmonize mixed legal systems so that all women can enjoy the same rights. The central challenge is to create laws that respect cultural differences without violating women's rights and discriminating against women.

Conclusions

With the winding down of major conflicts in Africa, especially after the 1990s, women's organizations have vigorously pressed for increased political representation and changes in policy and legislation regarding women's rights, including GBV. Unlike the post-conflict contexts prior to the 1990s, women's rights activists were beginning to see many of their aspirations for greater rights addressed through new constitutions and through the passage of legislation. One of the areas where these trends have been most visible is in efforts to pass legislation relating to gender based violence.

These changes could be explained by a confluence of a number of developments, including the rise of independent women's activism around GBV; regional networking of women's organizations; changing international norms, as evident in the adoption of UN Security Council Resolution 1325 regarding women's role in peacebuilding; changing regional norms as seen in the targets set by SADC regarding GBV and other women's rights concerns; donor funding strategies that supported efforts to pass GBV legislation and other related activities; and changing opportunity structures that allowed women's organizations to intervene in new ways to assert their demands in peace talks, through elections, as well as in constitution writing exercises. Increases in female political leadership also facilitated many of these changes.

Highlighting the legal dimensions of tackling GBV is not intended to be a normative statement privileging such solutions. Such solutions do not begin to address the structural, systemic and ideological reasons underlying violence that are related to gender inequality. The law may be at times counter-productive in dealing with domestic violence, when women victims wish to adopt other non-legal methods to deal with GBV because it may bring unwanted scrutiny by the police enforcement system. It is often minority and poor communities that disproportionately come under such scrutiny. Thus, the overemphasis on legal strategies is seen to remove agency from the woman and treats her only as a victim (Bumiller 2008, Garland 2001, Römkens 2001). Laws alone are insufficient and cannot

replace social policy and community-based strategies, e.g., providing funding for shelters and support for changing societal attitudes and stereotypes regarding gender.

Large constraints remain in implementing GBV legislation. These include the erosion of the justice system and the need to harmonize the plural legal systems in Africa to ensure equal access to justice. While it has been of critical importance to pass legislation regarding violence against women — and post-conflict countries have been more successful than other Africa countries in doing so — it has also become apparent that laws alone are insufficient and cannot replace community-based strategies, especially in countries with weak and poorly paid/corruptible judiciaries and police forces. Moreover, women victims themselves may wish to adopt other non-legal methods to deal with GBV and may not wish to have their partners arrested, as it brings the family into unwanted scrutiny by the police enforcement system. The overemphasis on legal strategies is seen to remove agency from the woman and treats her only as a victim. Poor treatment of rape survivors at the hands of the police also serves as a disincentive to report GBV incidents. Thus, a balance between legal and social policy strategies and developing supportive policies is needed, including the creation of shelters, community supports for domestic violence, and efforts to change societal attitudes and stereotypes through education.

Another limitation of policy in many countries is the persistence of steep penalties for rape and other forms of GBV. This makes victims reluctant to report rape, especially if family members are involved, and it results in few prosecutions and even fewer convictions. Human rights advocates are increasingly challenging death penalties for rape on the grounds that the use of violence to punish and deter violence is counterproductive and inhumane. The weakness of the security apparatus may result in excessive violence by security officers being directed at suspects. .

Finally, in countries coming out of conflict there are particular challenges due to the erosion of the judicial and criminal system. The basic infrastructure of courts, police stations

and prisons need drastic improvement to ensure fair trial standards. Corruption often remains rampant in situations where judges and other personnel are poorly paid.

We have witnessed some important developments in women's rights with the end of conflict in Africa especially after the 1990s, when the number of conflicts began to decline significantly. The passage of GBV legislation is one of these developments, representing a normative shift that is taking place regarding women's rights across the continent. It remains to be seen whether these changes will result in changes in people's daily lives and whether they can be sustained.

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