

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

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**Best Practices and Recommendations from the Great Lakes  
Region of Africa**

## **CASE STUDIES UGANDA AND RWANDA**

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# UGANDA

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## HISTORY OF THE CONFLICT

Uganda has had a history of civil conflict since its independence from the United Kingdom in 1962 - triggered by political instability and a series of military coups between groups of different ethnic and ideological composition that resulted in a series of dictatorships. In 1966, just four years after independence, the central government attacked the Buganda Kingdom, which had dominated during British rule, forced the King to flee, abolished traditional kingdoms and declared Uganda a republic. In 1971 Army Commander Idi Amin Dada overthrew the elected government of Milton Obote, and for eight years led the country through a regime of terror under which many people lost their lives. Amin was overthrown in 1979 by rebel Ugandan soldiers in exile supported by the army of Tanzania. Obote returned to power through the 1980 general elections, ruling with army support. In 1981 a five-year civil war broke out led by the current president, Yoweri Kaguta Museveni and the National Resistance Army (NRA), protesting the fraudulent elections. Known as the Ugandan Bush War, the conflict took place mainly in an area of fourteen districts north of Kampala that was known as the Luwero Triangle. Many human rights abuses were committed as the government attempted to suppress the rebellion and thousands of people were killed. The NRA finally succeeded in overthrowing the Obote government in 1986 and Museveni became president.

The longest and most devastating conflict, however, has been the conflict in Northern Uganda, in the land of the Acholi people.<sup>1</sup> It has been long and complicated, and its root causes are embedded in Uganda's troubled past. The official starting point, however, was resistance in Northern Uganda to the NRA's overthrow of the Obote government in 1986. Attacks on the civilian population by the LRA were frequent, resulting in the large scale internal displacement of communities, gross human rights violations including the abduction, rape, maiming and killing of civilians, massive recruitment of child soldiers, abduction of girls for sex slavery and widespread sexual violence.

The conflict in Northern Uganda lasted almost 20 years and caused the displacement of an estimated two million people. The height of displacement was in 2003-2004. Every household in Northern Uganda has suffered the effects of the conflict in terms of abduction, death, displacement, poverty, sickness and other problems. An entire society was systematically destroyed physically, culturally, emotionally, socially and economically. Over two million people were in 200 camps where they lived in abominable conditions, defined by staggering levels of squalor, disease and death, humiliation and despair, appalling sanitation and hygiene, massive overcrowding and malnutrition and extreme insecurity resulting in violence against women and children.

In recent years, the situation in Northern Uganda has steadily improved as a result of government commitment to end the 20-year old war, increased pressure on the LRA, demands from the international community and the ongoing peace process in the South Sudan Capital of Juba. Peaceful resolution was the most crucial step to be sought by all parties to the conflict. Although the parties were able to draw up a Cessation of Hostilities Agreement in 2006, Kony refused to sign the final agreement. However, the Government of Uganda is implementing the Agreements. Thousands of Internally Displaced Persons (IDPs) have returned to their villages and hopes are high that peace shall indeed prevail in the once productive region of Uganda.

Joseph Kony remains at large and the LRA has continued to terrorize populations in the Democratic Republic of Congo (DRC), South Sudan and the Central African Republic. The LRA has been accused of widespread human rights violations, including murder, abduction, mutilation, child-sex slavery and recruitment of child soldiers. The LRA has been designated a terrorist organization by the United States and Joseph Kony, along with several other LRA leaders, have been issued arrest warrants by the International Criminal Court (ICC) (two have since died.)

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<sup>1</sup> The Acholi are an ethnic group from Northern Uganda and South Sudan. Approximately 1.17 million Acholi were counted in the Uganda census of 2002, and 45,000 more were living in South Sudan in 2000.

Western Uganda also experienced armed conflict from 2002 to 2007 as a result of activities by various rebel forces from Uganda and the DRC. Additionally, in the Karamoja region in the east, currently 165,000 people remain displaced in camps due to insecurity caused by cattle rustling and the killing of civilians by Karamojong warriors. These incidents, as well as clashes with local militias, have also caused displacement in Katakwi district.

## **Role of Women**

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

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

- Globally, there was a vocal women's movement, with the "decade of the woman" beginning in Mexico City with the UN's World Conference on Women in 1975. African women participated in subsequent Women Conferences in Copenhagen (1980), Nairobi (1985) and Beijing (1995). Those women who were part of the educated and well-traveled elite knew about the movement and the frameworks that were being created.
- Many women participated in the Nairobi conference and came back inspired and ready to organize.
- Women began to realize they were organized and had importance to society.
- Organizations such as FIDA Uganda (the Uganda Association of Women Lawyers) and widows' organizations were being created to support women after the years of conflict.
- Women were empowered economically – during the conflict, men stopped being the sole providers. Women sustained families, beginning with the disappearances and killings of men under Amin regime and continuing with the conflict in the North.
- Politically – women were becoming organized and advocating for their rights.
- Political will – the government realized that it needed to win the support of women. Museveni had recruited many women into the liberation movement. He realized that in order to win their support politically he had to listen to them. The government also realized the efficiency of channeling resources through the women's organizations that were forming.
- National and local women's organizations were able to take advantage of this new political space and bring women's concerns into institution building.

It was also women who advocated for peace. Betty Bigombe was the chief point person in talks between the Government of Uganda and the LRA. A member of the Ugandan Parliament, in 1998 she was appointed Minister of State for Pacification of north and northeastern Uganda, and was tasked with seeking a peaceful end to the violent conflict there. Bigombe reached out to Joseph Kony and initiated talks that brought the rebel leaders and government ministers face to face for the first time. She met numerous times with Kony throughout the 1990s and 2000s as part of a mediation effort that set the stage for the 2006-2008 peace talks in Juba, South Sudan, where she acted as an independent mediator in the peace process.

Ugandan women also developed women's associations, pressed for negotiations and advocated for gender sensitive peace agreements. During the 2006 Juba peace process, although not officially represented, they formed a Women's Peace Coalition that was present and lobbied for women's interests, and were thus able to influence the outcomes of the peace agreements. The final agreement included a provision on taking a gender sensitive approach in implementation, and agreed to recognize and address the special needs of women and girls, ensure that their experiences are taken into account, protect their dignity, privacy, and security and facilitate the participation of women in implementation of the agreement. In addition, the Agreement on Disarmament, Demobilization and Reintegration (DDR) between the LRA and Government of Uganda specifically states that the parties will ensure that the DDR process incorporates the special rights and needs of women, and in particular the mandates of UNSCR 1325.

## CONSTITUTION

Uganda has a comprehensive, human rights based constitution that includes many provisions related to the rights of women and has been the cornerstone for advocacy and for building the country's legal frameworks. The role that women were able to play in advocating for the inclusion of women's issues, based on their preparation and knowledge of international standards and gender principles, was critical to their success.

Uganda did not have a consistent or viable system of governance from the time of independence until the writing of the new constitution in 1995. The 1962 independence constitutional process was controlled mainly by the British and thus Uganda did not have ownership of its own constitution. The 1962 constitution was overthrown by Obote and replaced by the 1967 Republican Constitution, which did not adopt international principles or contain provisions on human rights. After the National Resistance Movement (NRM) government came into power, a new constitution writing process began in 1989, culminating in the 1995 Constitution. Due to the populist nature of the NRM government, the country's turbulent experiences of the prior two decades of conflict, and the grave human rights abuses and lack of democratic governance by previous governments, the NRM sought to create an inclusive, democratic and safeguarded constitution. A constitutional commission was formed that included a wide variety of experts including a judge, lawyers, historians, political scientists, a doctor, financial and military experts and religious and cultural leaders. The Commission carried out extensive consultations and educational activities throughout the country and with special interest groups including women, youth, people with disabilities, the elderly, religious groups and the kingdoms of Uganda, in order to draft a constitution based on the views of the people.<sup>2</sup>

One of the first tasks of the reconstruction process was for the government to regain international legitimacy. In doing so, it looked to international law, recognizing international human rights standards and integrating these standards into the country's legal framework. Consultations with the people also indicated their agreement with international treaties that advanced their rights and national interests, and the need to incorporate them in the constitution.<sup>3</sup> As a result, the Constitution is a virtual replica of the **Universal Declaration of Human Rights** and the subsequent human rights treaties to which Uganda is a party.

Women's organizations played a large role in the post-conflict reconstruction strategy in order to ensure that women's interests were included. They successfully lobbied for the appointment of two women to the Constitutional Commission: Miria Matembe, former Minister of Ethics and Integrity, and Mary Maitum, both women lawyers and activists who argued strongly in favor of incorporation of gender principles in accordance with international obligations. The inclusion of these two strong, knowledgeable women lawyers on the Constitutional Commission and the additional advice of expert lawyers who were familiar with the international human rights conventions were key to the outcome of the constitutional process, as they were able to successfully articulate Uganda's international obligations and advocate for a constitution that included human rights and women's rights.

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

The recommendations of the Constitutional Commission were reviewed and voted on by the Constituent Assembly, of which fifty-two (18%) of the delegates were women. Most of them joined the Women's Caucus, which was strongly supported by the women's movement, and were instrumental in ensuring that key gender

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<sup>2</sup> Interview with George Ufoyuru, Director of Regional Services, Uganda Human Rights Commission, Kampala, December 17, 2012.

<sup>3</sup> Report of the Constitutional Commission of Uganda, 1995.

provisions were included in the constitution.<sup>4</sup> Although they faced resistance at times, they used several strategies including having men introduce their proposals and boycotting the Assembly when they did not get their way.<sup>5</sup>

The Constitution of Uganda guarantees fundamental freedoms and human rights in line with the International Bill of Rights and emphasizes that any rights of individuals or groups enshrined in the Constitution must be respected, upheld and promoted by all organs and agencies of government and by all persons. It specifically recognizes the significant role that women play in society. It further provides that all persons are equal before the law in all spheres of political, economic, social and cultural life and in every other respect are guaranteed equal protection of the law. It calls for equality and freedom from discrimination; specifically provides for women's rights including the right to equal treatment and opportunity in all spheres with men; support for advancement; affirmative action; protection of women's rights; and the prohibition of all laws, cultures, customs or traditions that are against the welfare or interests of women or undermine their status. The Constitution also provides for the participation of women at all levels of government.

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

## INSTITUTIONS

Uganda has been relatively more successful at institution building than other African countries, and the role of human rights principles and the strength of the women's voice during its reconstruction process helped build gender sensitive institutions.

### Parliament

Under Uganda's Constitution, each of its 111 districts must have at least one woman representative to Parliament. According to parliamentary rules, all committees are to have 30% women representation.

#### Numbers:

- Uganda has had a woman Speaker of Parliament since 2011.<sup>6</sup>
- In 2013, 30 percent (9) of senior ministers were women and 30 percent (14) of junior ministers were women. Women were appointed to head key ministries of Finance, Planning and Economic Development, Education, Health, Energy and Minerals and Trade and Industry.
- The number of women in Parliament has steadily increased to 34% in 2013, mainly due to affirmative action and an increase in the number of districts.<sup>7</sup>

The **Uganda Women Parliamentary Association (UWOPA)** was established during the 5<sup>th</sup> Parliament of Uganda (1989-1994) to ensure engendered laws, policies, political processes and equity in resource allocation and to improve the quality of life of women through effective representation, capacity building, political support and networking. When legislation is under consideration in Parliament, UWOPA holds workshops, group discussions and roundtables with stakeholders, citizens and civil society organizations (CSOs) on its application especially in regards to women's rights.

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

<sup>5</sup> Interview with Sylvia Tamale, Makerere University, December 5, 2012.

<sup>6</sup> As of December 2013 the Speaker of Parliament is the Rt. Hon. Rebecca Alitwala Kadaga.

<sup>7</sup> Center for Women in Governance (CEWIGO), Uganda Country Report, *Women Count 2013: Civil Society Monitoring of UNSCR 1325*, Global Network of Women Peacebuilders 2013, 10.

In its work, UWOPA has achieved the following:

- By working with several civil society organizations and having roundtable discussions, UWOPA helped pass several recent gender laws including the Domestic Violence Act, Prevention of Trafficking in Persons Act and Prohibition of Female Genital Mutilation Act.
- Worked to create a positive perception of the pending Marriage and Divorce Bill by working with parliamentarians, religious leaders and the general public.
- Effectively lobbied the President to achieve an increase in the number of women ministers and women in the cabinet.
- Championed to make gender responsive budgeting a priority in Parliament.

However, women in Parliament still face several challenges, including working to pass laws that face obstacles due to the patriarchal nature of Ugandan society, which is deeply entrenched in culture and religion; low level of influence on key decisions; cultural beliefs affecting opportunity for women in leadership; inadequate funding, which means that UWOPA remains invisible at the grassroots, creating a disconnect between them and the people; and difficulties in attracting the support of more male members of Parliament. Many women also lack adequate knowledge of gender issues and advocacy skills, and have difficulty in working with budgets.

### **Local Government Councils**

At the local level, the Constitution requires that 1/3 of each local government council be comprised of women. Over the years, the number of women in local councils has steadily been increasing, mainly due to affirmative action policies and the increase in the number of districts. However, while about 40 percent of councilors in Uganda are women, few of them are in leadership positions. In addition, their influence remains low.

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

- CEWIGO, GNWP UNSCR 1325 Monitoring Report 2012

### **Ministry of Gender, Labour and Social Development**

When President Museveni came to power in 1986, women's groups successfully lobbied him to incorporate women into the new government structures, and in 1989 he created a Ministry of Women in Development, which was able to participate in and influence the constitutional process. The current Ministry of Gender, Labour and Social Development (MGLSD) derives its mandate from the Constitution's provisions for protection and promotion of fundamental rights of the poor and other vulnerable groups as well as institutions of traditional or cultural leaders. It is the national machinery responsible for initiating, implementing and coordinating policies and programs that support women's empowerment and advancement. This is done through the **Uganda Gender Policy** (2007), which is an integral part of the national development policies.

At the local level, the MGLSD has Community Services Departments that are responsible for gender concerns, mainstreaming gender into all program implementation and budgeting and District Gender Offices that also make interventions on behalf of women's issues including sexual and gender-based violence, which are critical especially in conflict areas of the north. However, these offices tend to be underfunded.

## **Ministry of Foreign Affairs**

The Ministry of Foreign Affairs is tasked, among other things, with promoting regional and international peace and security and implementing and reporting on international treaties and conventions. Much of its gender work is focused around implementation of the ICGLR framework.

## **Human Rights Commission**

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

The Constitution therefore provided for creation of the Uganda Human Rights Commission (UHRC) to receive and investigate complaints of human rights violations; monitor places of detention; establish human rights education programs and raise public awareness of human rights and constitutional protections; make recommendations to Parliament; monitor government compliance with international human rights treaties; publish periodic reports on its findings; and submit annual reports to Parliament on the state of human rights and freedoms in the country.<sup>8</sup> The UHRC is unusual in that it functions as a tribunal with the power to investigate and decide legal remedies. Decisions of the Commission may be appealed to the High Court.

Most of the work of the Commission is done through its regional and field offices. A majority of its cases have related to torture, liberty, property and child maintenance, brought against the police, military, private individuals and the Uganda Prisons Services. The Commission has been successful in outreach especially in rights education for the police and army, and in helping the public become more aware of their rights. In 2012 the UHRC won the award for best national human rights institution in Africa from The African Commission on Human and Peoples' Rights.

However, in relation to women's rights cases, the Commission's impact has been limited. A vast majority of the cases brought before the UHRC by women relate to child maintenance. Only a very limited number of complaints relate directly to violations of women's rights such as domestic violence, gender-based violence or land tenure. The Commission generally refers these types of cases to legal service NGOs.<sup>9</sup> The Commission's ability act in favor of women's rights has been constrained by a lack of financial resources due to inadequate government funding, its broad mandate and the prevalence of discriminatory traditions and customs, which require long-term human rights education and awareness raising to reform.<sup>10</sup>

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<sup>8</sup> The Commission was officially established under the UHRC Act of 1997.

<sup>9</sup> Such as The Uganda Association of Women Lawyers - FIDA Uganda, who provide legal services and assist with strategic litigation.

<sup>10</sup> International Federation for Human Rights (FIDH), *Women's Rights in Uganda: Gaps Between Policy and Practice* 2012, 8-9, at <http://www.fidh.org/IMG/pdf/uganda582afinal.pdf>.



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

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

In addition, although the Commission is tasked with monitoring compliance with international human rights treaties and has been involved with CEDAW review and reporting, it has little knowledge of UNSCR 1325. This, along with the Commission's constraints as noted above, represent a missed opportunity for advancing the women, peace and security framework, especially as the Commission is working in conflict areas and has been doing much to harmonize relations between the military and civilian population.<sup>11</sup>

### **Uganda Law Reform Commission**

The Uganda Law Reform Commission (ULRC), Parliament and the Executive branch of government share responsibility for eliminating law that discriminates against women. The ULRC plays a central role in the planning, preparation and presentation of new bills. It was established as a department of the Ministry of Justice in 1975, became an autonomous statutory body in 1990 and was entrenched in the 1995 Constitution. Its principles include "contributing to a legal system that supports the principles in the Constitution, national policies and plans, and international commitments entered into by Uganda."<sup>12</sup> In this capacity, the ULRC plays a role in ensuring that Uganda's laws comply with its international commitments including CEDAW and other instruments protecting the rights of women, specifically making recommendations on discriminatory legislation.

### **Equal Opportunities Commission**

The Equal Opportunities Commission (EOC) is provided for under Article 32 of the Ugandan Constitution for the purpose of eliminating discrimination and inequalities against any individual or group of persons through taking affirmative action to redress imbalances and promote equal opportunities for everyone in all spheres of life. It was established in 2007 and has been operational since 2010. Its five members represent different constituencies including women, youth, elderly and people with disabilities. It has a wide mandate and range of powers, including conducting investigations; educational campaigns; issuing recommendations; contributing to legislative processes; preparing guidelines; monitoring compliance with international instruments; and settling disputes. However, the EOC has been the least successful of these institutions, and is yet to be adequately funded to be able to carry out its functions to the fullest.

## **LAWS AND POLICIES FOR WOMEN**

### **Political Participation Laws**

As mentioned previously, Uganda's Constitution has quotas for women at both the national and local levels that have greatly increased women's political participation. Under the Constitution, each of Uganda's 112 districts must have at least one woman representative to Parliament. Its electoral law includes 112 District Women; 10 Uganda People's Defense Forces Representatives, of whom 2 must be women; 5 Youth Representatives, of whom 1 must be a woman; 5 Representatives of Persons with Disabilities, of whom 1 must be a woman; and 5 Representatives of Workers, of whom one must be a woman.

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

<sup>12</sup> Website of the Uganda Law Reform Commission, [www.ulrc.go.ug](http://www.ulrc.go.ug).

## Laws Addressing Sexual and Gender-Based Violence

Sexual and gender-based violence is widespread in Uganda mainly due to cultural norms, discriminatory practices and economic disempowerment experienced by women throughout the country. The situation is most exacerbated in the north, where the decades long conflict has wreaked havoc. The most common abuses during the war were abductions of young girls by the LRA as sex slaves, brutalization of women during raids on villages and violence in IDP camps that included rape and domestic violence. After the conflict women continue to suffer rape, physical assault and violence, psychological abuse, denial of access to food and property, husbands withholding resources for family care and other economic abuse.<sup>13</sup> In areas where the clan system is strong, the community often shuns women who were abducted and impregnated by rebels and their children are left without a clan.

The most common type of abuse across the country is intimate partner violence and other forms of domestic violence. According to studies, more than two-thirds of women who have been in marital relationships have experienced some sort of violence by an intimate partner, and more than half experience violence on a daily or weekly basis.<sup>14</sup> Conflict-affected environments are also ripe for human trafficking, an opportunistic crime that takes advantage of conflicts, humanitarian disasters and the vulnerability of people in situations of crisis. Reports show that women and children from war town areas of Northern Uganda and Karamoja are being trafficked within the country and across borders into South Sudan and to other East African countries and beyond for purposes of forced labor and sexual exploitation. There have also been reports of Karamojong women and children being sold routinely at cattle markets.

Uganda has ratified key international instruments that address sexual and gender-based violence including CEDAW, the Maputo Protocol, the ICGLR Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children, the Goma Declaration on Eradication of Sexual Violence and Ending Impunity and the Kampala Declaration by Heads of State and Government of the Member States of the ICGLR on Sexual and Gender-based Violence. In December 2008, the Government of Uganda further committed itself to addressing post-conflict gender-based violence, and in particular sexual violence, by adopting a National Action Plan to implement UNSCR 1325, 1820 and the Goma Declaration.

These international instruments have been important in advocating for the principle of equality and dignity for women, and especially in advocating for laws addressing violence against women. Lawyers, judges and advocates familiar with the instruments are able to pull from them and use them continuously to remind the government of its obligations, which have also been domesticated through the Constitution. UNSCR 1325 has especially been critical in dealing with transitional justice – in messaging and strategies for advocacy.<sup>15</sup> In line with its international obligations and the National Action Plan, in 2010 Uganda enacted several laws addressing gender-based violence, including the Domestic Violence Act, the Prohibition of Female Genital Mutilation (FGM) Act, the Anti-Trafficking in Human Persons Act, and the International Criminal Court Act. Prior to passage of these laws, prosecutions relied only on the outdated Penal Code Act of 1950, which included rape, defilement, indecent assault and prostitution.

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<sup>13</sup> FIDA, *Whither Justice for Women?*, 2011, 14.

<sup>14</sup> FIDH, *Women's Rights in Uganda*, 13.

<sup>15</sup> Interview with Stella Biwaga, Program Officer, FIDA Uganda, Kampala, December 3, 2012.

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

Civil society advocates continue to press for passage of additional bills that would provide additional protections to women including a **Marriage and Divorce Bill**, which seeks to provide a comprehensive law that address injustice and discrimination against women in all family relations including marriage and divorce, and a **Sexual Offences Bill** sanctioning sexual violence. The bills have faced opposition especially from religious leaders and communities. Key to garnering support for the bills are awareness raising among the grassroots, religious and community leaders, and Parliamentarians.<sup>16</sup>

Although these pieces of legislation are a major step forward in Uganda’s post-conflict legal system, there have already been clear challenges in implementation. There are pre-existing challenges preventing access to justice that have not been addressed, including the costs associated with the complaint process and medical examinations in the case of violence, and the physical inaccessibility to courts for many in rural areas. There is a lack of sensitization among the judiciary and law enforcement. The majority of law enforcement officers such as the police, local councils, health workers, community development officers and probation officers are not trained on the new laws and the prevention of gender-based violence, and there is little privacy or protection for victims. Women are still accorded low status in many areas and have inadequate knowledge and information about their legal rights and the working of the legal system. In the north, traditional justice such as that administered by the Acholi has been used to promote reconciliation. However, these systems tend to be male dominated and thus reinforce women’s marginalization.

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

Comprehensive data regarding sexual and gender-based violence is lacking. However, the Global Network of Women Peacebuilders’ UNSCR 1325 Civil Society Monitoring Report of 2013 indicates that domestic violence and defilement (rape of young children) are prevalent in post-conflict districts. Nationally, defilement is the

<sup>16</sup> FIDH, *Women’s Rights in Uganda*, 12.

most prevalent form of gender-based violence. SGBV cases are severely underreported. Even when they are reported, the number of adequate, the number of prosecutions and convictions is not commensurate with the number of cases reported.

### *Cases investigated and prosecuted in 2011*

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

*Source: Uganda Police Annual Crime and Traffic/Road Safety Report 2011, GNWP 1325 Monitoring Report 2012, U.S. Department of State Trafficking in Persons Report 2012. Data was unavailable for cases of domestic violence and FGM.*

There is a need for capacity building of both official and civil society actors to address gender-based violence; sensitization of law enforcement and public officials; and human rights education, especially to counter negative attitudes and practices and make women aware of their rights.

### **Family Law**

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

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

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

The Bill contains separate provisions governing Christian, Hindu, Customary and Baha'i marriages but does not cover Muslim marriages due to objections from the Muslim community, which opposed provisions they considered to be contrary to Sharia law.<sup>17</sup> This leaves Muslim women without the same protections and violates international human rights and constitutional law prohibiting discrimination based on sex or religion. The Bill was originally part of a comprehensive Domestic Relations Bill. However, due to the opposition by the Muslim community, the Bill was withdrawn and divided into three bills: The **Domestic**

<sup>17</sup> FIDH, *Women's Rights in Uganda: Gaps Between Policy and Practice*, 11.

**Violence Act**, which passed in 2010, the **Marriage and Divorce Bill**, and a separate bill on the **Administration of Muslim Personal Law**, which has been set aside for later agreement.<sup>18</sup>

Women's groups and women parliamentarians have been active in advocating for the bill. However, although the bill in various forms has been pending for over 14 years, it has still not been passed and was recently rejected yet again by Parliament in September 2013. The bill faces challenges mainly due to traditional and cultural values. There has been resistance from religious leaders and at the community levels. Further awareness raising is required with faith-based organizations and communities. In addition, there is resistance from many male members of Parliament, who consider it a "women's bill" and would likely be affected by it themselves.

## **Children**

Children and girls suffered enormously during the 20-year conflict in Northern Uganda, with the LRA infamous for recruiting child soldiers and abducting girls. The Constitution's bill of rights is applicable to children, and the Constitution additionally contains specific provisions related to the rights of children. The **1997 Children Act** puts into effect the Constitutional provisions on children and emphasizes the protection of the child by upholding the rights, protection, duties and responsibilities as contained in the **Convention on the Rights of the Child** and **African Charter on the Rights and Welfare of the African Child**. The law was enacted to provide for the care, protection and maintenance of children; provide for local authority support for children; establish the Family and Children Court; and make provisions for children charged with offences and for other related purposes.

## **Land Rights**

The International Bill of Rights ensures equality in economic rights and Uganda is also signatory to several international and regional instruments that guarantee women equal access to land including CEDAW and the Maputo Protocol. The Constitution also ensures equality between men and women including in respect to the acquisition and holding of land. The **Land Act of 1998** and **Land Amendment Act of 2004** provide the legal framework through which the fundamental rights of women are to be protected to redress gender disparity in access to and control over economically significant resources and benefits. In 2010 a multi-sectoral and multi-disciplinary process was begun to develop a **National Land Policy** to tackle one of the most emotive, culturally sensitive, politically volatile and economically central issues in Uganda in order to ensure efficient, equitable and sustainable utilization and management of Uganda's land and land-based resources for poverty reduction, wealth creation, and overall socio-economic development.

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<sup>18</sup> Ibid.

LAW/POLICY	PROVISIONS
<b>Land Act of 1998 (as amended 2004)</b>	Provides a system for the tenure, ownership and management of land and decentralization of administration; prohibits decisions affecting customary land that deny women access to ownership, occupation or use of any land or in any way violate any constitutional provisions affecting women. Also requires that at least one-third of members of Communal Land Management Associations and District Land Boards are female and that the Uganda Land Commission and parish level land committees have at least one woman. Confers the right to security of a spouse to occupy and use the family home during marriage.
<b>National Land Policy 2013</b>	The government will ensure that both men and women enjoy equal rights to land before, during and after marriage and at succession without discrimination. This includes reviewing and regulating customary law and practices in access to and ownership of land; addressing gender inequity in statutory law regarding inheritance and ownership of land; and ensuring that women are fully integrated in all decision making structures and processes in access to and use of land.

However, land rights remains one of the most challenging issues facing women in Uganda. Under customary practices, land generally belongs to the family or clan and is held by men, though women may have the right to live on the land and farm it. Thus while women do most of the agricultural work, it is estimated that they own only seven percent of agricultural land.<sup>19</sup> This leaves them disempowered and vulnerable. In the conflict-affected area of the north, economic abuse has been found to be a major form of violence against women.<sup>20</sup> In fact, FIDA Uganda has noted that most of the cases they assist with are of gender-based violence arising out of land disputes.<sup>21</sup> The conflict exacerbated the situation as many displaced and widowed women were left without access to land.

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

**Education**

The Ugandan Constitution states that all children are entitled to basic education, and the **Children Act** of 1997 provides that all children must be educated. Uganda has as **Universal Primary Education Policy**, which makes primary education free. It also has a **Gender in Education Policy** (2008), which aims to:

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<sup>19</sup> FIDH, *Women’s Rights in Uganda*, 22.  
<sup>20</sup> FIDA Uganda, *Whither Justice?*, 17.  
<sup>21</sup> *Ibid* at 23.

- Enhance equal participation for all in the education system
- Promote the provision of relevant knowledge and skills equally to males and females
- Ensure gender responsive planning, budgeting, programming and monitoring and evaluation
- Promote an enabling and protective environment for all persons

The mid-point review report of 2010 on Uganda's efforts toward obtaining Education for All (EFA) and the MDGs stated that the country is on track to meet its 2015 targets on universal education. The report also showed Uganda to be on track to reach gender parity in primary and secondary education by 2015.

The Ministry of Education and Sports attributes this closure of the gender gap in education to a number of factors such as the introduction of Universal Primary Education (UPE); good governance; several government education policies; Girls Education Movement; improvements in classrooms and toilet facilities that are gender friendly; training of teachers in gender responsive methodologies; sensitization of parents and the wider community about the education of the girl child; establishment of the Gender Desk in the Ministry of Education and Sports; and other government programs and additional initiatives that were supported by UNICEF, UNESCO, PLAN International and other nongovernment organizations.<sup>22</sup>

However, despite achieving success in parity in primary education, serious challenges remain at the secondary levels, with high dropout rates for girls, generally due to competing pressures from family, household chores, childcare and early pregnancy. Poor access to schools also causes problems especially for girls. In rural areas, girls who have to walk miles to school are often at risk of violence.

Affirmative action in public universities has led to increased enrollment of women at the university level for those who are able to complete secondary education.

## Health

Uganda's Constitution says that the State shall take all practical measures to ensure the provision of basic medical services to the population. The **Public Health Act of 1935** addresses infectious and epidemic diseases and is severely outdated. Health care in the country is driven mainly by the government's health policies. Access to quality healthcare in Uganda remains a challenge and the country is slow in making progress towards the fifth MDG of improving maternal health. Lack of resources for healthcare facilities, prevalence of HIV/AIDS, harmful traditional practices, and lack of access to family planning services and contraception are all challenges for women. The Government has taken several measures recently aimed at improving health for women including adoption of a **Health Sector Quality Improvement Framework and Strategic Plan, Second National Health Policy (2010)** and a **Roadmap for Reduction of Maternal and Newborn Mortality and Morbidity**. One of the biggest challenges, according to the Ministry of Health, is to retain doctors in the public sector and under-funding.

## Employment

Uganda's Constitution states that women shall have the right to equal treatment with men, which includes equal opportunities in political, economic and social activities. The **Employment Act of 2006** prohibits any form of discrimination in employment on the basis of sex. It also:

- Guarantees equal pay for men and women
- Provides for maternity leave
- Protects a woman's job during leave related to pregnancy or childbirth
- Prohibits sexual harassment in the workplace
- Prohibits dismissal based on pregnancy or sex

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<sup>22</sup> Joseph C. Ounyo, *Count Down to 2015: is Uganda on Track? Assessment of Progress to Attainment of EFA Goals in Uganda*, Uganda National Commission for UNESCO, June 2012, 31.

The **Equal Opportunities Commission**, discussed under Institutions, was established by the Constitution to eliminate discrimination and inequalities in employment, including against women.

### **Gender Mainstreaming**

In addition to its Constitutional framework, Uganda has a policy structure in place to ensure equality for women. The overarching framework for promoting peace, prosperity and growth in Uganda is the **Poverty Eradication Action Plan (PEAP)**, which aims to make Uganda a Middle Income Country and address the international targets of the MDGs. It recognizes that gender should be a consideration in all national policies. The **Uganda Gender Policy of 2007** establishes clear guidelines for the identification, implementation, and coordination of interventions designed to achieve gender equality and women's empowerment. It is a framework for redressing gender imbalances as well as a guide for all development practitioners. The aim of this policy is to guide all levels of planning, resource allocation, and implementation of development programs with a gender perspective. The policy gives a clear mandate to the Ministry of Gender, Labour and Social Development (MGLSD) to mainstream gender and address inequalities in all sectors and enhance gender programming and budgeting. The policy is in line with Uganda's regional and international obligations to address gender equality and ensure women's rights through access to justice; eliminating socio-cultural discrimination against women and girls; addressing gender-based violence; and promoting awareness about women's rights.

### **National Peace, Recovery and Development Plan**

The **National Peace Recovery and Development Plan for Northern Uganda (PRDP)** is a national program to stabilize the north by improving socio-economic conditions, community recovery, improving the quality of life in IDP camps, completing the return and reintegration of displaced populations, initiating rehabilitation and development activities and ensuring that the vulnerable are protected in line with international obligations. The PRDP completed its initial three-year phase (2009-2012) and is now in its second phase (PRDP2). The plan has four strategic objectives, namely: (1) Consolidation of State Authority; (2) Rebuilding and empowering communities; (3) Revitalization of the economy; and (4) Peace building and reconciliation, through which various programs and projects are being implemented. The Office of the Prime Minister oversees implementation of the PRDP.

Civil society groups have been key in advocating for the inclusion of gender perspectives in the PRDP. They pressured at the peace talks in Juba, and were active in mid-term evaluation of the PRDP1 and giving input into PRDP2. As a result, PRDP2 contains specific provisions on the mainstreaming of gender by all stakeholders throughout the PRDP's planning cycle. It further requires all district local governments to mainstream gender in their work plans and to ensure that gender-sensitive projects, grants and special programs benefit at least 30% women.

### **Citizenship**

Uganda's citizenship laws provide an example of legislation that protects women and gives them equal status to men. The Constitution provides that every person born either in or outside of Uganda who has one parent or grandparent that is a Ugandan citizen is considered a Ugandan citizen by birth. Thus citizenship can be determined both through the father and the mother. The **Uganda Citizenship & Immigration Control Act (1999)** further defines citizenship. Under Ugandan law:

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



## Refugees

Uganda is host to thousands of refugees from neighboring countries, including Burundi, the Democratic Republic of the Congo, Kenya, Rwanda, the Sudan and South Sudan. In 2012, the UN High Commissioner for Refugees (UNHCR) office in Uganda counted more than 190,000 registered refugees and asylum-seekers.<sup>23</sup>

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

Under the Act, a refugee is defined as:

- A person who has a well-founded fear of being persecuted for reasons of race, sex, religion, nationality, membership of a particular social group or political opinion and is unable or unwilling to return or avail himself or herself to the protection of that country.
- Owing to external aggression, occupation, foreign domination or events that seriously disturb the public order in either a part or a whole of his or her country of origin the person is forced to leave his or her habitual residence to seek refuge outside his country.
- Owing to a well-founded fear of persecution for family to conform to gender discriminating practices that person is compelled to leave his or her country to seek refuge in another country
- That person is considered a refugee under any treaty obligation to which Uganda is a party or any law in force at the commencement of the Refugee Act of 2006.

Refugees have the right to:

- Be issued an identity card in a prescribed form stating the refugee status of the holder for purposes of identification and protection.
- Be permitted to remain in Uganda.
- Be entitled to fair and just treatment without discrimination on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion.
- Receive the same treatment accorded to aliens under the Constitution and any other law in force in Uganda and to be entitled to privileges that may be granted under the laws of Uganda by any administrative agency or organ of the government.
- Receive at least the same treatment accorded to aliens generally in similar circumstances relating to movable and immovable property and rights to transfer assets.
- Same rights as nationals to education.
- Same rights as nationals of Uganda with respect to practicing their religion and religious education.
- Have a right of association as regards non-political and non-profit making associations and trade unions.
- Have free access to courts of law, including legal assistance under applicable laws of Uganda.
- To engage in agriculture, industry, handicrafts and commerce and establish commercial and industrial companies in accordance with the applicable laws and regulations in force in Uganda.
- To practice a profession for which he or she is qualified.
- To have access to employment and engage in gainful employment.

With the help of UNHCR, community-driven assessments that take into consideration age, gender and diversity are used to provide refugees with targeted health care, primary education, legal aid for victims of SGBV and subsistence allowances for the chronically ill or incapacitated. UNHCR is working with the Office of the Prime Minister, the Refugee Eligibility Commission, the newly created Refugee Appeals Board and district governments to build their institutional capacity to deal with refugee issues. It is also urging the Government to consider providing refugees with the options of naturalization or indefinite residency status.<sup>24</sup>

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<sup>23</sup> UNHCR 2013 Country Operations Profile – Uganda, <http://www.unhcr.org/pages/49e483c06.html>.

<sup>24</sup> Ibid.

## **Internally Displaced Persons**

The **1325 framework** mandates that parties protect women and girls in humanitarian situations and settlements such as refugee and IDP camps, and take into account their specific needs. The **Maputo Protocol** provides for the protection of women in armed conflicts, including requiring states to protect IDPs against all forms of violence and exploitation, and has several provisions addressing the living conditions and livelihood for women. The **ICGLR** has a **Protocol on the Protection and Assistance to Internally Displaced Persons**. The UN has developed its **Guiding Principles on Internally Displaced Persons**.

The 20-year conflict in Northern Uganda caused the displacement of an estimated two million people, with the height of displacement in 2003-2004. Effects of life in the camps included massive overcrowding with loss of privacy and dignity; destruction of a culture and value system during 10 years in camps; suicide and despair, especially among mothers who felt they could not provide for their children; rampant rape and sexual abuse, especially by government soldiers; loss of livelihood; and abduction and brutalization of children by the LRA.

The situation of IDPs in Northern Uganda between 2003 and 2005 was so severe that it attracted the attention of the international community, in particular the UN. International mediators also insisted that IDP issues be included in the negotiations and mediations at all of the peace talks.

The **National Policy for Internally Displaced Persons** was developed in August 2004 to minimize internal displacement and its effects by providing an enabling environment for upholding rights and entitlements of the internally displaced; to promote integrated and coordinated response mechanisms to address the causes and effects of internal displacement; to assist in the safe and voluntary return of the internally displaced; and to guide the development of sectoral programs for recovery through rehabilitation and reconstruction of social and economic infrastructure in support of the return and resettlement of IDPs. The Ugandan policy, drawing from the UN's Guiding Principles on Internal Displacement, approximates a comprehensive policy, addressing all causes of internal displacement. Along with this, the government has also implemented specific programs for the return, resettlement and reintegration of IDPs to specific regions.

The Government of Uganda is one of the few in the world to have adopted a national policy to uphold the rights of IDPs. The Human Rights Commission, NGOs and community leaders have been active in working to return IDPs to their homes. However, lack of effective implementation of the policy has left a significant proportion of the displaced vulnerable to human rights abuses, disease and deprivation. Although approximately three-quarters of the population have returned, some remain displaced due to land disputes. Vulnerable populations such as people with disabilities, severely traumatized people, female-headed households, orphans and elderly who would have no way to support themselves outside of the camps have been unable to return. Those who have returned to their homes face situations of food insecurity and lack of services.

## **1325 National Action Plan**

The Ministry of Gender, Labour and Social Development (MGLSD), as the national machinery responsible for initiating, implementing and coordinating policies and programs that support women's empowerment and advancement, with support from the United Nations Fund for Population Activities (UNFPA) developed a National Action Plan and reporting framework as a guide for the implementation of UN Security Council Resolutions 1325, 1820 and The Goma Declaration on Eradicating Sexual Violence and Ending Impunity in the Great Lakes Region.

The National Action Plan establishes a multi-sectoral framework for implementation of the three instruments and assigns responsibility to different government bodies, civil society organizations, private sector institutions and development partners. The goals of the National Action Plan are to:

- Ensure the protection of women and girls from gender-based violence and promote human dignity and equality.

- Increase women's participation in the prevention and resolution of conflict, the maintenance of peace and security and post conflict peace building.
- Increase public awareness of 1325, 1820 and the Goma Declaration.
- Improve linkages and long-term engagement between local authorities and central government agencies, regional co-ordination and co-operation between governments and international donors in ending the crime of rape and other sexual violence.
- Develop the capacities of key actors responsible for implementing the plan and improve co-ordination in data collection, analysis and quality reporting.

Although it is not a legally binding document, it serves as guidance and a measurement of indicators. The biggest challenge in implementing the NAP is mobilization of resources.

## JUSTICE

### Judiciary

In establishing its post-conflict legal system, Uganda had to tackle the issues that many conflict-affected countries must face: the destruction of the formal justice system and the existence of strong customary justice systems. During the constitutional process, people expressed concern about the administration of justice and the little relevance that formal courts had in the lives of most ordinary people.<sup>25</sup> In pre-colonial Uganda the kingdoms had administered the law. Such laws sought amicable dispute resolution through compensation, reconciliation or restitution. The aim was to create peace, stability, harmony and cooperation, all of which were regarded as indispensable to society. The administration of justice was clearly understood by everyone because it evolved out of their own practical and historical experiences. The colonial law imposed by Britain was often not in harmony with these customs and practices, was distant and inaccessible to people in rural areas and understood only by a privileged few such as lawyers. After decades of war, the institutions of Uganda were in tatters and the people were left with few alternatives for justice either between formal or informal systems.

Recognizing the importance of the rule of law and a strong formal justice system, the Constitution established a formal, independent judiciary. However, customary systems and practices are allowed to exist as long as they are not in conflict with any constitutional principles including equality and nondiscrimination against women. Further, the Judicature Act provides that customary law shall be applicable in courts of law only if it is not repugnant to justice, morality and good conscience.

The state judicial system is composed of the Supreme Court, Court of Appeal, High Court (a circuit court currently in 6 circuits), and 26 Magistrates Courts that handle the bulk of civil and criminal cases. The Constitutional Court decides matters related to the Constitution and its interpretation. There are also Local Council Courts, which were established to bring justice closer to the people and operate at every village, parish, town, division and sub-county level. The jurisdiction of these courts is strictly limited to cases of a civil nature and remedies may include various forms of reconciliation and restitution. By law at least two members of each of these courts must be women.

In 2013 women represented 50 percent of the top leadership in the lower courts. At the higher levels, women judges constituted approximately one-quarter of the Court of Appeals and High Courts and 40 percent of the Supreme Court.<sup>26</sup>

In terms of international law, it generally comes into play through judges. Under the Ugandan Constitution, international treaties must be ratified then domesticated; however, nothing prohibits courts from referring to them. Because the Constitution is so firmly aligned with universal human rights principles, it is widely accepted that the Constitution and domestic laws should be interpreted in compliance with international

<sup>25</sup> Report of the Constitutional Commission of Uganda, 1995.

<sup>26</sup> GNWP 1325 Monitoring Report 2013, 11.

obligations. Although there is no common practice, some courts have relied on international treaties to interpret domestic law, including CEDAW, UDHR, ICCPR and CRC.<sup>27</sup> In addition, some judges have been progressive in citing directly to CEDAW to protect the rights of women.<sup>28</sup> It is therefore important to train judges on human rights and international instruments.

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

Access to justice in Uganda, especially in the conflict-affected north, is still inhibited by lack of a fully functional judicial system. Issues cited include continued patriarchal dominance of institutions that do not give priority to women; ineffective police interventions and lack of police protection; burdensome costs; distance of courts; corruption; ignorance of new laws; lack of a human rights based approach to administration of justice; difficulties gathering medical evidence; convoluted processes placing time, transportation, and money burdens on women; backlogs; and lack of strategy or policy for addressing war related violence.<sup>29</sup>

The formal institutions must be strengthened through additional training, sensitization and resources and women need to be aware of their rights. In addition, improving legal aid services to bear the cost of seeking justice will help improve access for women in the north.

## Strategic Litigation

Strategic litigation (sometimes referred to as public interest litigation) involves cases brought before a court, on behalf of the public or a broad group of people, alleging rights violations and seeking legal reform. The use of strategic litigation by NGOs assisted by private lawyers is a strong advocacy tool in Uganda. Several landmark constitutional cases have been decided in recent years challenging discriminatory provisions of Ugandan law and clarifying women's rights.

In 2003, FIDA Uganda (the Association of Women Lawyers) and five petitioners filed a constitutional petition seeking declarations to the effect that several sections of the Divorce Act violated the Constitutional rights of non-discrimination, equality before the law, and equal rights in marriage and its dissolution.<sup>30</sup> The Divorce Act gave various rights and advantages to men in divorce proceedings that it did not give to women. The court held that the relevant provisions of the law were unconstitutional. The decision was a milestone in upholding women's rights and subsequent divorce cases have upheld the ruling.

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

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<sup>27</sup> Manisuli Ssenyonjo, *The Protection of Women's Human Rights by Domestic Courts in Africa: A Perspective from Uganda*, THE AFRICAN REGIONAL HUMAN RIGHTS SYSTEM: 30 YEARS AFTER THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS, Manisuli Ssenyonjo ed. (Leiden, The Netherlands, Martinus Nijhoff Publishers, 2012), 364.

<sup>28</sup> Interview with Sylvia Tamale, December 5, 2012.

<sup>29</sup> FIDA-Uganda, *Whither Justice for Women?*, 21-28; Interview with Pamela Angwech, April 23, 2013; Interview with Jonathan Muwaganya, April 23, 2013.

<sup>30</sup> *Uganda Association of Women Lawyers & Others v Attorney General, Constitutional Petition No. 2 of 2003*

<sup>31</sup> *MIFUMI Uganda LTD & Others v Attorney General and Kenneth Kakuru, Constitutional Petition No. 12 of 2007*.

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

Also in 2007 the Constitutional Court declared provision of the Penal Code Act concerning the crime of adultery to be unconstitutional because it treated women differently from men. Under the law, a married man could have an affair with an unmarried women but a married woman could not have an affair with an unmarried man. In the same case the Court also ruled several provisions of the Succession Act unconstitutional for discrimination against women, giving preference to men and preventing women from receiving inheritance.<sup>32</sup>

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

In 2010 the Court ruled that the practice of female genital mutilation (FGM) violated both the Constitution and the international law to which Uganda is a party, taking into account the UN Interagency Statement on Elimination of FGM stating that FGM violates a series of well-established human rights principles including equality and non-discrimination and the right to freedom from torture or cruel, inhuman or degrading treatment or punishment.<sup>33</sup> During the pendency of the case, which was filed in 2007, Parliament had rejected a bill outlawing FGM; however, by the time the case was decided, a bill had been passed.

## Transitional Justice

There are many local justice systems that exist in Uganda and in the regions that have been affected by conflict. Most tribes in the North follow the Acholi tradition of practice, while many in the south follow the traditional practice of the Buganda Kingdom.

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

The Acholi traditional justice system was recommended by the Acholi and their cultural leaders to the Ugandan government during the 2006 peace talks as a way to deal with LRA rebels. The Acholi traditional justice mechanism of *Mato Oput* requires that the offenders admit guilt and ask their victims for forgiveness. It aims to restore relations between the perpetrators and survivors. This has been a particularly sensitive issue in Acholi land, as many of the perpetrators of crimes during the conflict were members of the community who had been abducted by the LRA as children; thus the challenge is how to reintegrate them back into the community. However, *Mapo Oput* it is meant to deal at the community level, and not at the larger scale level of the conflict and those bearing most responsibility for abuses. Nor do traditional systems deal with capital offenses such as rape, mutilation, abduction, disappearances, etc., although local women's groups are working with traditional leaders to help mediate cases of gender-based violence.<sup>34</sup>

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<sup>32</sup> *Law and Advocacy for Women in Uganda v Attorney General, Constitutional Petitions No. 13/05 and 05/06.*

<sup>33</sup> *Law and Advocacy for Women in Uganda v Attorney General, Constitutional Petition No. 08 of 2007.*

<sup>34</sup> Interview with UN Women Gulu Office, April 23, 2013.

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

### **International Crimes Division**

In order to ensure compliance with the Rome Statute and in an effort to enforce accountability for the crimes committed during the conflict in Northern Uganda, in 2010 the Government of Uganda passed the International Criminal Court (ICC) Act. The law allows Ugandan courts to try crimes against humanity, war crimes, and genocide as defined under the Rome Statute. Accordingly, an International Crimes Division attached to the High Court has been established and tasked with applying the Act to crimes committed during the conflict and to enable domestic investigations and prosecutions to hold perpetrators accountable.

However, justice for victims of war crimes has been elusive. Uganda was the first country to refer its situation to the ICC in 2005, resulting in arrest warrants for Joseph Kony and other LRA leaders. However, the international justice mechanism tries only the highest officials and is not effective for women on the ground. Neither Uganda's formal or traditional justice systems have had the capacity to deal with war crimes. Although the International Crimes Division of the High Court was established pursuant to the ICC Act, very few cases have been brought before the ICD, and to date none have been brought on behalf of women and girls. One major obstacle to functioning of the court has Uganda's amnesty law, which provided amnesty for any rebel who "renounces and abandons involvement in the war or armed rebellion." The Amnesty law was repealed in 2012.

## **CONCLUSIONS AND RECOMMENDATIONS**

Uganda has a strong legal framework in place addressing gender equality and women's rights that with proper implementation should be able to further the women, peace and security agenda. It has strong representation of women in public leadership. Civil society organizations and particularly women's CSOs are active in building capacity, educating communities and engaging in high-level policy discussions on gender, peace and security issues. Much is being done by the MGLSD, Ministry of Foreign Affairs and CSOs to address gender-based violence and promote the women, peace and security agenda. The Human Rights Commission has been a strong institution working for human rights, and to the extent possible for women's rights, and the Law Reform Commission is addressing discriminatory laws. For these groups, international obligations and corresponding domestication have been key.

However, challenges still remain. As the 2012 Civil Society Monitoring Report notes:

Uganda has one of the most gender-sensitive constitutions in the world and has many laws and policies in place to address gender imbalances and women's empowerment, and it has a NAP for addressing issues of women, peace and security. The challenge is now to mobilize the resources required to implement the NAP...Because many government technocrats do not really appreciate gender issues, planners do not adequately provide for interventions that specifically address women's needs in sector policies, in sector plans and sector budgets. The result is that the well-meaning laws and policies largely remain on paper. Government priorities for post-conflict areas continue to focus on physical infrastructure even as the dignity and bodily integrity of women continues to be violated.

In order for Uganda's strong legal framework around gender equality and women's rights to be thoroughly implemented, it is necessary to:

- Continue to empower women in leadership and build the capacity of women in politics and governance to advocate for gender and women's rights principles.
- Disseminate the laws and policies and educate citizens on their rights.

- Continue to work with communities and leaders to eliminate traditionally negative perceptions and practices.
- Sensitize men on gender issues.
- Work with practitioners, civil society and cultural leaders to provide additional psychosocial support to address post-conflict issues such as depression and alcoholism.
- Sensitize law enforcement and government officials on gender issues and new gender laws.
- Strengthen the capacity of institutions to address gender issues and rights violations.
- Advocate for government to allocate sufficient resources to implementation of laws and policies related to gender.

## RWANDA

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### HISTORY OF THE CONFLICT

The conflict in Rwanda in the 1990s, which included the Civil War that began in 1990 and the genocide that took place during three months in 1994, was based on ethnic differences between Hutus and Tutsis, which had been exacerbated since colonial times. In pre-colonial Rwanda, the Tutsis had dominated the small Rwandan aristocracy, but the two populations lived together as one nation until the Belgians exploited their differences. First occupied and colonized by the Germans, during World War I the country was taken over by the Belgians, who ruled until independence in 1962. Utilizing the classic strategy of "divide and rule," the Belgians granted preferential status to the Tutsi minority and instituted the identity card system that designated every Rwandan as Hutu, Tutsi or Twa.

In the 1990s, Rwanda's population of seven million was composed of three ethnic groups: Hutu approximately 85%, Tutsi 14% and Twa 1%. Due to historical resentments, Hutu extremists within Rwanda's political elite blamed the minority Tutsi population for the country's increasing social, economic and political pressures. Tutsi civilians were also accused of supporting a Tutsi-dominated rebel group, the Rwandan Patriotic Front (RPF), which invaded Rwanda in 1990 from Uganda in an effort to unseat the government of President Juvénal Habyarimana. A ceasefire agreement was reached in July 1992, and the war officially ended on August 4, 1993 with the signing of the Arusha Accords. However, despite the accords and the agreement on power sharing, tensions persisted between Hutu and Tutsi factions.

Through the use of propaganda and constant political maneuvering, then President Habyarimana and Hutu extremists increased divisions between Hutus and Tutsis. Hutu extremists began targeting women with the 1990 "Hutu Ten Commandments,"<sup>35</sup> which portrayed Tutsis as the enemy and Tutsi women as their instruments.

The assassination of President Habyarimana on April 6, 1994 when his plane was shot down near Kigali unleashed terror against the Tutsis, who were blamed for the incident. Under the cover of war, Hutu extremists launched their plans to destroy the entire Tutsi civilian population. Political leaders who might have been able to take charge of the situation and other high profile opponents of the Hutu extremist plans were killed immediately. Tutsi and people suspected of being Tutsi were killed in their homes and at roadblocks set up across the country as they tried to flee. Entire families were killed at a time. Women were systematically and brutally raped and many were left as widows. It is estimated that some 200,000 people participated in the perpetration of the genocide, and that within three months between 800,000 and one million men, women and children perished. Policymakers in France, Belgium, the United States, and the UN were aware of the preparations for massive slaughter and failed to take the necessary steps to prevent it. The

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<sup>35</sup> A document published in the December 1990 edition of *Kangura*, an anti-Tutsi newspaper in Kigali. The Hutu Ten Commandments are often cited as a prime example of anti-Tutsi propaganda that was promoted by extremists in Rwanda following the 1990 invasion by the RPF and prior to the 1994 genocide.



civil war and genocide ended when the Tutsi-dominated rebel group, the RPF, defeated the Hutu regime and President Paul Kagame took power.

Rwanda has emerged from the 1994 genocide and its devastating impact and has moved on as a progressive post-conflict country with notable development initiatives that have played a role in peace building and reconciliation along with substantial progress for women. However, the country remains under threat of conflict from the rebel Democratic Liberation Forces of Rwanda (FDLR) operating from the eastern Democratic Republic of Congo (DRC), which is a source of insecurity in the Great Lakes Region as a whole. The threat posed by the FDLR in fact led to preemptive attacks by Rwandan government forces in eastern DRC between 1996 and 1998, which escalated into a regional war that pitted Rwanda and Uganda against Zimbabwe, Angola, Chad, DRC and Namibia. This ended with the Lusaka Peace Agreement of July 1999. However, the M23, FDLR and other rebel groups remain in the eastern DRC threatening security in Rwanda and especially to women as one of the main tactics of these groups remains the rape of women.

## **Role of Women**

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

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

The Rwandan Government, specifically the ruling RPF, has made women's inclusion a hallmark of its program for post-genocide recovery and reconstruction. The government has recognized the roles that women played both during and after the genocide and conflicts. The policy of inclusion owes much to the RPF's exposure to gender equality issues in Uganda, where many of its members spent years in exile.<sup>36</sup>

## **CONSTITUTION**

In terms of governance, Rwanda has followed the model of Uganda. Much like Uganda, Rwanda had a history of constitutions that were created by colonial powers and did not respond to the wants or needs of the Rwandan people, and the period following independence in 1962 was characterized by instability. The 1962 independence constitution consolidated the Republic and established a theoretical multiparty system. Juvenal Habyarimana suspended this Constitution after his 1973 coup. The resulting 1978 constitution in turn suppressed the multi-party system and established a one-party system. Under internal and external pressure, in 1991 President Habyarimana adopted a constitution reestablishing the multi-party system.<sup>37</sup>

After the genocide in 1994 a Fundamental Law was established to recognize the rule of law and establish

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<sup>36</sup> Elizabeth Powley, "Case Study Rwanda: Women Hold up Half the Parliament," in *Women in Parliament: Beyond Numbers*, IDEA 2005, 159.

<sup>37</sup> Senator Wellars Gasamagera, *The Constitution Making Process in Rwanda: Lessons to be Learned*, paper presented to the 7th Global Forum for Reinventing Government, Vienna, Austria, June 26-29, 2007, <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan026620.pdf>.



power sharing between the parties. It consisted of the 1991 Constitution; the 1993 Arusha Peace Agreement, and an RFP declaration establishing inclusive government institutions and renouncing power sharing with political parties and organizations that organized and perpetrated genocide.

In 2003 a Constitutional Commission was established to write a permanent constitution. Out of the 12 members of the Commission, three were women: Marie-Therese Mukabalisa, Domitille Mukantaganzwa, who later became Executive Secretary of the National Gacaca Courts, and Judith Kanakuzwe, a representative of civil society with a long history of activism. Following the model of Uganda, the process in Rwanda was comprehensive and included widespread consultations, mobilization and education. Given the deep ethnic divides that had caused the conflict and genocide, the main priorities in establishing the constitution were equitable power sharing; establishing a pluralistic democratic regime; fighting against genocidal ideology and all its manifestations; eradication of ethnic and regional divisions and promotion of national unity; equality among Rwandans and between men and women; establishment of a government committed to citizen welfare and social justice; and the resolution of conflict through dialogue and consensus.

The participatory approach adopted by the Constitutional Commission allowed significant input by women and women's organizations. The women's movement actively mobilized to ensure that equality was a cornerstone of the document. The umbrella organization, Collectifs Pro Femmes/Twese Hamwe and its member NGOs worked with women parliamentarians and the Ministry of Gender and Women in Development to advocate for women's issues.<sup>38</sup> These organizations not only carried on a lobbying campaign but also worked to disseminate information about the draft constitution to women's organizations throughout the country, holding consultations, meetings and trainings on the proposed provisions. They advocated strongly for the inclusion of principles of equality and women's rights for a gender sensitive constitution; integrating gender policy into the constitution; and the inclusion of women in decision-making processes. In their lobbying efforts women leveraged international instruments such as the **International Bill of Rights** and **CEDAW**, stressing the government's obligations as states parties and their duties to report under these instruments.<sup>39</sup>

The result is a constitution that incorporates the principles of gender equality and the elimination of all forms of discrimination against women and provides a strong legal framework for mainstreaming gender, with specific reference to CEDAW. It further provides that all persons are equal before the law in all spheres of political, economic, social, and cultural life. It specifically recognizes equal rights in marriage, education, and health. It provides for women's participation at all decision-making levels and establishes several gender related institutions.

## INSTITUTIONS

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

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

### Parliament

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

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<sup>38</sup> During the nine-year period of post genocide transitional government from 1994-2003 the number of women's representation in parliament had reached 27.7% (by appointment) and a Ministry for Gender had been established.

<sup>39</sup> Interview with Christine Tuyisenge, Executive Secretary, National Women's Council, Kigali, December 11, 2012.

level. These women are expected to ensure that the needs and interests of women are taken into account in all laws discussed and passed by Parliament.

Rwanda stands out globally as the nation with the highest percentage of women in Parliament, at 56% in 2013. The higher levels of government, including ministers and permanent secretaries, also reach well over the 30% quota. The Rwanda Women Parliamentary Forum (FFRP according to its French acronym) was established in 1996 by women of the National Transitional Assembly to strengthen the role of women parliamentarians. It is a mechanism for facilitating gender integration in Parliament. The FFRP works closely with Parliament to integrate gender at all levels through sensitization, strengthening women's empowerment, and integrating gender in laws, policies, programs, projects and budgets at the central and local levels. The FFRP has had a good deal of success due to its strength in numbers, political support both from President Kagame as well as other men in politics, and the gender sensitivity and preparedness of its members. Its biggest challenges remain those that Parliament faces in general including overall lack of funding and resources and related challenges in implementing laws.

### **Local Governance**

However, at the level of local governance, women are less represented and do not always meet the 30% threshold, especially at the levels of mayors and economic affairs. At the local level they are much more represented in social affairs.

#### ***Women's representation in governance***

*(Source: GNWP Civil Society Monitoring Report 2012)*

<b>Level of Governance</b>	<b>Percentage</b>
Ministers	28.6%
Ministers of State	66.7%
Permanent Secretaries	50%
Parliament (Senate)	34.6%
Parliament (Lower Chamber)	56.3%
Governor of Province	24.3%
District (Mayors)	10%
Deputy Mayors (economic affairs)	16.7%
Deputy Mayors (social affairs)	83.3%

## **Ministry of Gender and Family Protection**

After the genocide, from 1994 to 1999, the RFP's former finance minister Aloisea Inyumba served as the first Minister of Gender and Social Affairs and was instrumental in the country's post-genocide period of healing. She oversaw the burial of genocide victims, the resettlement of returnees, actively promoted truth-telling and reconciliation, spearheaded a national adoption campaign to place genocide orphans in homes and developed the Ministry.

The Ministry of Gender aims to promote equality and equity for both men and women and ensure the empowerment of women through the national development processes of Rwanda. It also promotes the family as a conducive environment for the overall development of the nation's children according to internationally agreed standards and principles. It does this through coordinating implementation of the national gender policy, acting as the lead gender advocate at different levels of government and liaising and networking at the national, regional, and international levels.

Within the Ministry is the permanent Beijing Secretariat, which is charged with monitoring of the implementation of the Beijing Platform for Action.

## **Gender Monitoring Office**

Rwanda's 2003 Constitution established the Gender Monitoring Office to monitor and supervise all government programs in order to ensure gender equality in all aspects of national development, monitor compliance with all international obligations with regards to gender, raise awareness and fight against gender-based violence. The GMO became operational in October 2008 with the appointment of the High Monitoring Council and started its work in July 2009 with employees from the Beijing Secretariat.

## **National Women's Council**

The National Council for Women was established in 1996 as a forum for women and girls to come together to share ideas and participate in the development of the country. The Government then enshrined in the 2003 Constitution the National Women's Council (NWC). It is a structure under the Office of the Prime Minister that coordinates the functioning of Women's Councils from grassroots to the national level. The Women's Councils constitute a critical forum to empower women for their effective participation in leadership and national development. Their main interventions are in the sectors of civic education, health and social affairs, capacity building and women's economic empowerment. The NWC has been instrumental in sensitizing women and building their capacity for active participation in decision making, which has reduced gender inequalities both in the economic and political sectors. It was also instrumental in mobilizing women during the 2003 constitutional process. The 24 seats reserved in Parliament's Chamber of Deputies are filled through Women's Councils.

The Ministry of Gender has established strategic linkages with the NWC, whose base at the grassroots level provides for important linkages between policy and implementation.

## **The National Gender Cluster**

The gender cluster is a forum chaired by the Ministry of Gender and Family Promotion in which the Government of Rwanda, development partners, private sector and civil society meet and discuss planning, coordination and prioritization of gender equality interventions. Its objective focuses on facilitating the collaboration and coordination of all interventions in the area of gender by sharing experiences, generating

new ideas, identifying gaps, lobbying and advocating for achieving gender equity and equality in sectors across the country. It also plays a significant role in advocating for implementation of the National Gender Policy.

### **Ministry of Foreign Affairs**

Along with its diplomatic duties, among the Ministry's tasks is to follow-up and ensure implementation of all international agreements and promote human rights, in particular to combat genocide and crimes against humanity.

### **Ministry of Finance and Economic Planning**

Rwanda has been progressive in its use of gender responsive budgeting. As the ministry responsible for planning and managing the Rwandan economy, the Ministry of Finance and Economic Planning plays a critical role in ensuring that the Government's budgets follow policies and national commitments to gender equality objectives. This includes coordination and implementation of the gender responsive budgeting process; establishing guidelines for gender responsive budgeting; and working closely with the Ministry of Gender, Gender Monitoring Office and other partners to monitor progress and implementation.

### **National Unity and Reconciliation Commission**

The 1993 Arusha Peace Accords provided for the creation of a National Unity and Reconciliation Commission. Due to the intervening violence, the Commission was not established until 1999, when the Rwandan Government established the National Unity and Reconciliation Commission to promote peace, unity and prosperity in Rwanda, through the preparation and coordination of national programs aimed at building national unity and reconciliation amongst all Rwandans. The Commission was made permanent by the 2003 Constitution. It carries out its functions through civic peace education programs (*Ignando*), leadership programs (*Itorero*), national summits, trainings and research. The Commission has made progress mainly through intensive mobilization, training and grassroots partnership with citizens in peace building and solving social conflicts.

### **Human Rights Commission**

Also provided for in the Arusha Peace Accords, Rwanda's Human Rights Commission was established by the Constitution to educate and mobilize the population on matters relating to human rights; carry out investigations on human rights abuses in Rwanda and file complaints with competent courts; and prepare and disseminate reports. It is also tasked with sensitizing government institutions regarding international human rights conventions and integrating them into existing national law, and submitting reports to relevant international human rights treaty monitoring bodies.

Rwanda's National Gender Policy stipulates that the Human Rights Commission will:

- Establish gender sensitive structures to monitor human rights from a gender perspective, in collaboration with the Gender Monitoring Office and other actors.
- Put in place programs to sensitise populations to women's rights as human rights and ensure compliance with these rights.

### **Law Reform Commission**

The Rwandan government in July 2012 approved the establishment of a National Law Reform Commission to review existing laws and propose reforms for improvement and modernization where necessary, and to ensure that national laws are in compliance with the international treaties to which Rwanda is party.

## LAWS AND POLICIES FOR WOMEN

### Political Participation Laws

In addition to the representational quotas included in the Constitution, the Government of Rwanda has enacted enabling legislation further advancing the participation of women in governance. Organic Law No. 16 of 2003 (as amended in 2007) governing political organizations and politicians ensures that women make up 30% in governance and in political parties and provides that “(e)ach political organization shall constantly reflect the unity of the people of Rwanda and gender whether in recruiting members, setting up administrative organs and in its functioning and activities.”

Organic Law No. 17 of 2003 related to presidential and legislative elections provides that women have equal rights as men to stand in presidential elections.

### Laws Addressing Sexual and Gender-Based Violence

Many of the violent acts committed during the 1994 genocide were gender specific, affecting women differently than men. A post conflict report by the UN estimated that up to 250,000 women were raped during the genocide. It is also estimated that almost every woman and girl who survived the genocide survived some form of sexual assault, if not rape. Sexual violence was used as a weapon of war and took many forms, including individual rape, gang rape, rape with objects including guns, sexual enslavement, forced marriage, sexual torture and mutilation.

The medical, physical and psychological effects of sexual violence are enormous. Unwanted pregnancies, intentionally transmitted HIV/AIDS, permanent physical scarring and medical trauma, emotional trauma and stigma are all results of the physical violence perpetrated during the genocide. In addition to sexual violence, thousands of women became widows, facing stigma and discrimination and increased risk of violence. While the incidence of gender-based violence lessened after the conflict, patterns of violence continue today.

In Rwanda, spousal battery, sexual abuse and rape are prevalent and commonly cited forms of gender-based violence during peacetime. In addition, economic violence is often included under the rubric of gender-based violence. This includes inheritance disputes between a widow and her husband’s family over his property, as well as acute economic dependence of women on their husbands. Many women are unable to support themselves and are less able to escape violent relationships. The prevalence of HIV/AIDS in Rwanda has also contributed to and been exacerbated by gender-based violence. Women who are HIV positive are also at a greater risk of becoming victims of domestic violence.

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

The law specifically recognizes the Government’s obligations under the **International Covenant on Civil and Political Rights (ICCPR)**, **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, **CEDAW**, **African Charter on Human and People’s Rights** and **Maputo Protocol**, the **Convention on the Rights of the Child**, and domestic code. It defines gender-based violence as any act that results in bodily, psychological, sexual and economic harm to somebody just because they are female or male. This violence

may be exercised within or outside the household. The protections under the law are extensive and include, among other provisions:

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

According to the 2012 GNWP UNSCR 1325 Civil Society Monitoring Report, the number of gender-based violence related cases reported has remained somewhat constant during monitoring periods. However, in early 2013 a report of the Rwanda National Police did report a 3.9% decline in the number of cases reported during 2012. Defilement, assault, and rape were the top three types of cases reported. The Rwandan police attribute the drop in the number of cases to increased awareness of gender-based violence issues.

<b>TOTAL GBV CASES REPORTED 2012</b>	<b>3,444</b>
Defilement	1,648
Assault	578
Rape	255
Other	963

Source: Rwanda National Police<sup>40</sup>

Information on the number of cases investigated, prosecuted and penalized were not available at the time of the writing of this report.

Although there has been a slight decrease in the number of cases reported, several challenges remain. Many cases go unreported. In addition to the cases of defilement, assault and rape specified, there is a persistence of domestic violence and limited legal assistance for victims. Several of the identified root causes of gender-based violence in Rwanda are traditional social and gender norms; limited awareness of human rights; silence due to stigma; limited dialogue on sexuality and gender-based violence; imbalance of power; poverty; and alcohol abuse.<sup>41</sup>

## Family Law

Under Rwanda's Constitution, women and men have equal rights in marriage. Only monogamous civil marriage between a man and woman is legally recognized. Polygamy is prohibited. No person can be married without his or her consent. Both mothers and fathers have the right and duty to bring up their children.

Since the genocide, women have acquired a significantly more important role in the family. Increasingly, women and men make joint decisions about their children and general household matters.

Under the **1988 Family Code**, both spouses are deemed to have responsibility to rear and maintain their children. However, elsewhere, the code names the father as the head of the 'conjugal community', comprising the husband, wife and their children. In addition, in cases where a couple are in dispute regarding parental

<sup>40</sup> Maria Kaitesi, *Rwanda: Gender-based Violence Cases Down 3.9 Percent*, allAfrica, January 23, 2013, <http://allafrica.com/stories/201301230033.html>.

<sup>41</sup> Mary Balikungeri and Immaculee Ingabire, Report on the Republic of Rwanda, in *Women Count: Security Council Resolution 1325 Civil Society Monitoring Report 2012*, Global Network of Women Peacebuilders 2012, 8.

authority, it is the father's will that prevails. Dowry is recognized, but not as a condition for validity of the marriage, and is regulated by the Ministry of Justice. The minimum age for marriage is 21, though in practice many marriages occur under the customary system and are not registered; thus early marriage and other discriminatory practices prohibited by the law continue to occur.

The Family Code states that women and men have the same rights to petition for divorce, and to have ongoing equal rights and responsibilities in regard to any children. However, divorce in Rwanda is difficult, which can leave women stuck in abusive or negative situations. There is ongoing debate over a new Divorce Bill that would allow couples requesting separation by mutual consent to obtain it more quickly.

Regarding marital property and inheritance, the 1999 inheritance and marital property law detailed in the section on land rights below guarantees equal rights for female and male spouses and children to inherit property.

## Children

The 1994 genocide had an extreme effect on children. Those that survived the genocide were often physically and emotionally scarred. More than 95,000 children were orphaned. AIDS also ravaged the country, causing more than 264,000 children to lose one or both parents.<sup>42</sup> Rwanda ratified the **Convention on the Rights of the Child** in 1990, obligating it to protect its children. During the transition period women played a significant role in advancing the **2001 Law on Rights and Protection of the Child Against Violence**. The law defines a child as anyone under the age of 18 and covers a wide range of rights. It criminalizes murder, rape, the use of children for "dehumanizing acts," exploitation, neglect and abandonment and forced or premature marriage (under the age of 21).

## Land Rights

Rwanda is a signatory to several UN Conventions that provide access and ownership of land and other property rights to women such as **CEDAW** and the **Beijing Platform for Action**.

For many years, land rights for women and female orphans were not recognized. The main causes were the inexistence of efficient land administration systems and the prevalence of traditional systems of land tenure, which were complex and did not favor women and female descendants.

Rwanda has since 1999 put in place a progressive statutory regime that recognizes and protects women's rights to own and inherit land and the country has been undergoing major land use and land management policy reforms which affect women and gender relations in significant ways.

One of the earliest, and most successful, results of women's advocacy efforts was the **1999 Law on Matrimonial Regimes, Liberalities, and Successions**, commonly referred to as the Law on Succession or the Law on Inheritance, which for the first time established women's right to inherit land. In advocating for the law, women parliamentarians worked closely with the Women's Ministry and women's civil society organizations. In the aftermath of the genocide, which destroyed and scattered families, women's right to inherit land was critical – not just as a matter of women's rights, but because it had a direct impact on issues such as food production and security, the environment, settlement patterns and the livelihoods of families and children left behind.<sup>43</sup>

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<sup>42</sup> Yale Law School, *Representing Children Worldwide: How Children's Voices Are Heard in Child Protective Proceedings*, December 2005, [http://www.law.yale.edu/rcw/rcw/jurisdictions/afe/rwanda/frontpage.htm#\\_edn4](http://www.law.yale.edu/rcw/rcw/jurisdictions/afe/rwanda/frontpage.htm#_edn4).

<sup>43</sup> Elizabeth Powley, *Rwanda: The Impact of Women Legislators on Policy Outcomes Affecting Children and Families*, UNICEF 2006, 12.

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

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

It is in line with the **CEDAW** Article 16(1) (h) which provides the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property. It also upholds Article 26, which provides that parties to a marriage have equal rights and duties upon and during the subsistence of a marriage.

In the early 2000s, the Rwandan Government found it imperative to establish a national land policy that would enable the population to enjoy a safer and more stable form of land tenure. In 2004, a new **Land Policy** was enacted and the government embarked on a land reform process motivated by the desire to provide tenure security to all Rwandans as one of the strategies for attainment of national unity and reconciliation, the promotion of economic growth and the social welfare of all citizens.

The land policy aims at developing an appropriate land administration system that provides land tenure security for all citizens without discrimination. It complements the Rwanda Constitution and Inheritance Law. The land regimes are used to safeguard, protect and enforce the land rights of women and female orphans in different regions of Rwanda. Women and widows have the same rights as men to inherit land and female orphans equally share their parents' land with their brothers. In practice, the implementation of land related laws and policy allows women and female orphans to repossess and take control over their land for which they were deprived under the old and traditional system of administration.

Following the new land law and land policy, local leaders have helped widows and children in reclaiming land from which they were evicted. Most of the resolved claims have been cases of female orphans who were evicted from their land by their uncles and nephews after the death of both parents. According to a study done in five districts in Rwanda in October 2010, the current land law and land policy helped female orphans whose land had been grabbed to get back their land. 94% of them reported having received back land that was grabbed by their uncles and brothers while 6% stated that their rights were recognized by the mediation committee and law courts.<sup>44</sup> The results of the study show that implementation of current regulations related to land registration has also positively impacted on the level of land tenure security for men and women.

A 2011 survey performed by the Gender Monitoring Office showed that there has been a positive application of the law in local courts to solve succession disputes in Rwanda. Women are more willing to safeguard their family property after passage of the law, because they are legally assured of a share of family property. However, some shortcomings that were highlighted included limited knowledge of the law, lack of knowledge of where to report violations and lack of resources to do so.<sup>45</sup> In addition, a large number of Rwandan women enter into informal partnerships, and without a legal marriage have no claim on their partner's land for themselves or their children.

## Education

The government of Rwanda has also made a number of international commitments that illustrate its determination to promote education in general and girls' education in particular, including the **CRC** and the **MDGs**. This has led to an **Education Sector Policy**, which aims to ensure universal primary enrollment and basic education for all. Rwanda is one of the few African countries to achieve parity in primary education.

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<sup>44</sup> Uwayezu and Mugiraneza, 9/18.

<sup>45</sup> Emma Prince, *Gender office evaluates marriage, succession regimes*, The New Times, June 29, 2011, <http://www.newtimes.co.rw/news/index.php?i=14671&a=42689#>.



According to the Ministry of Education's 2011 statistics report, at the primary level 50.9% of students are girls and 49.1% are boys; and overall, 97.5% of girls and 94.3% of boys attend primary school.<sup>46</sup> At the secondary level, parity remains similar, with 51.5% of students girls and 48.5% boys; however, enrollment overall drops critically at the secondary level, with only 24.2% of girls and 27.2% of boys attending secondary school.

In its 2008-2012 strategic plan, the Ministry of Education set out to address challenges in girls' education including low completion and achievement rates for girls; gender insensitivity of teachers and curriculum; lack of separate facilities and infrastructure; lack of qualified women teachers in secondary education; gender-based violence and high pregnancy rates; inefficient dissemination of information on reproductive health and HIV/AIDS; and lack of self-esteem. Improvements have been seen on many of these fronts.

## Health

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

## Employment

Rwanda's Constitution prohibits discrimination of any kind based on sex and provides to every person the right to free choice of employment and the right to equal pay for equal work without discrimination.

Rwanda's **Labour Law of 2001** prohibits any discrimination in employment based on sex and:

- Guarantees equal pay
- Requires work accommodations for pregnant women
- Provides leave for pregnant women
- Provides for maternity leave
- Prohibits termination of employment due to pregnancy or childbirth
- Guarantees the right to breastfeed at the workplace
- Prohibits sexual harassment

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<sup>46</sup> Republic of Rwanda Ministry of Education, *Rwanda Education Statistics*, January 2012.

## Economic Empowerment

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

- East African Community Secretariat,  
*Gender and Community Development Analysis in Rwanda,*  
January 2009

Rwanda is signatory to several international instruments that address equality in economic rights including **ICESCR, CEDAW, MDGs** and **Maputo Protocol**.

One of Rwanda's greatest successes has been the inclusion of women in development and its focus on the economic empowerment of women. After the 1994 genocide women were a majority of the population and were seriously poverty stricken. In addition, the majority of women were widows and thus had to become the breadwinners of their families, which was a new role for them. They needed to find their way forward and with the support of the government, especially the Ministry of Gender, established forums for women to come together to share ideas instead of being isolated.<sup>47</sup> Through advocacy by women's groups and recognizing the need to empower women in order to move the country forward, the government established the Women Guarantee Fund to facilitate access to credit. Additional mechanisms now exist for women at the grassroots level to access credit and savings, such as banks for women investing in small and medium enterprises (Rwanda People's Banks) and cooperative savings and credit societies.

In line with its **Economic Development and Poverty Reduction Strategy (EDPRS)**, the Government of Rwanda, through its **Community Development Policy** (2001, revised 2008), which has an overarching goal of "ensuring effective and sustainable participation of the community in its own development," has established various programs to reach the grassroots level and community structures. In all of these programs, men and women are equally represented, and participate equally in the analysis of problems and design of development plans. The inclusion of both women and men in development programs has led to the active participation of women in commercial and economic activities that were traditionally reserved for men. Rwanda's previously mentioned land laws and policies have also been critical in empowering women economically.

The increased economic power of women has not only reduced poverty but also promoted equality at both household and community levels, which contribute to peace and security in communities.<sup>48</sup>

## Gender Mainstreaming

Rwanda has several policies that have mainstreamed gender into national development programs.

**Vision 2020** is Rwanda's development road map for 2000-2020. Its key pillars for national development include good governance and a capable state; human resource development and a knowledge-based economy; private sector-led development; infrastructure development; productive high value and market oriented agriculture; and regional and international integration. The Vision highlights gender as a crosscutting issue of each pillar.

*The centrality of gender equality in national development is underpinned by President Paul Kagame who reaffirmed his conviction that "gender equality is not just women's*

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<sup>47</sup> Interview with Christine Tuyisenge.

<sup>48</sup> Republic of Rwanda, Gender Monitoring Office, *Gender Best Practices in Rwanda 1995-2010*, Kigali, June 2010, 16.

*business, it is everybody's business and that gender equality and women's empowerment are critical to sustainable socio-economic development."*<sup>49</sup>

- Rwanda National Gender Policy 2010

To achieve the gender equality goal, the Government of Rwanda put in place a national gender policy in 2004, which it further revised and strengthened in 2010. The **National Gender Policy**, coordinated by the Ministry of Gender and Family Promotion, provides a framework for the promotion of gender equality and the empowerment of women. It clearly sets out the process for mainstreaming gender in all policies and programs in both the public and private sectors in their respective social, cultural, economic and political planning and programming. Implementation of the policy requires the joint action of different actors, decision makers, development workers and the entire population. It also lays out the key objectives for ensuring women's access to economic empowerment, health, education and training, governance and justice, land use, environmental protection, water and sanitation and participation in the private sector.

At the operational level, the main responsibility for ensuring the effective implementation of the National Gender Policy rests with individual government departments at national and district levels, which have appointed directors of planning as the new **Gender Focal Points**. These Gender Focal Points are in charge of monitoring implementation and progress of the national gender policy within their respective institutions and sectors; advocating for all data within their respective sectors to be disaggregated by sex; ensuring that all their policies, programs and budgets are gender responsive; and overseeing the capacity needs in gender mainstreaming within their respective institutions.

The **Economic Development and Poverty Reduction Strategy (EDPRS)** was developed as a strategy to translate the Vision 2020 into action. As in Vision 2020, gender is stressed in the EDPRS as a crosscutting issue. This means that the gender dimension should be mainstreamed in all development sectors as highlighted in the EDPRS in order to achieve equity of voice, participation, and accessibility to services in every sector. The strategy is translated into actions through three key flagship programs including economic empowerment, good governance and justice, and social welfare. Gender is also included as a cross cutting issue in other governmental policies such as the **National Decentralization Policy** and **Long Term Investment Economic Empowerment**.

### **Gender Responsive Budgeting**

In line with its international obligations, the Government of Rwanda has identified gender as a priority in its constitution and as a crosscutting issue in all of its national legal and policy frameworks including Vision 2020, the EDPRS and the National Gender Policy. In 2003, with the support of development partners, the government began implementing a **Gender Budget Initiative** in order to integrate gender into the country's development agenda and processes, establishing a Gender Responsive Budgeting Unit in the Ministry of Finance and Planning (MINECOFIN) to oversee its implementation. MINECOFIN, in collaboration with the Ministry of Gender and Family Planning and development partners work to institutionalize GRB as a key strategy for mainstreaming gender.

This is clearly a positive attempt by the Government of Rwanda to mainstream gender into budgets, which is key in successful planning. Challenges do remain including lack of capacity and gender analysis skills in certain ministries, and the lack of support in institutions where gender is still seen as a tangential issue and not a priority.

### **Citizenship**

Citizenship laws in Rwanda apply to all people, men and women equally, and Rwandan law shows a special sensitivity for stateless individuals, which often applies to refugees and especially women. Article 7 of the

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<sup>49</sup> Opening address by President Paul Kagame, *Gender, Nation Building and Role of Parliament* conference report, 2007.

Constitution provides that all persons originating from Rwanda and their descendants shall, upon their request, be entitled to Rwandan nationality. Rwandans or their descendants who were deprived of their nationality between November 1, 1959 and December 31, 1994 by reason of acquisition of foreign nationalities automatically reacquire Rwandan nationality if they return to settle in Rwanda. This is to allow for those who left Rwanda, especially due to ethnic conflict and persecution, to return to the country. In addition, under the **2008 Nationality Law**, any foreigner or stateless person may acquire citizenship through marriage to a Rwandan and maintain it after divorce, if obtained in good faith. Any child born in Rwanda of unknown or stateless parents is a Rwandan citizen, as is any foreign or stateless child adopted by Rwandan parents.

## Refugees

Rwanda is a signatory to the 1951 **Refugee Convention** and its 1967 Protocol, the 1961 and 1964 **Statelessness Conventions** and the majority of international conventions on human rights. In 2013, almost 75,000 refugees resided in the country, located in four camps and a transit center. A majority of these refugees are from the DRC. The refugee situation in Rwanda is also driven by the large numbers of Rwandans who fled the country as refugees and are now returning. In 2012, over 10,000 refugees returned to Rwanda, in addition to almost 7,500 in 2011 and 10,000 in 2010. With the implementation in 2013 of the government's **Sustainable Reintegration for Rwandan Returnees**, a comprehensive strategy for Rwandan refugees who fled the country between 1959 and 1998, an additional 20,000 are expected to return in 2014.<sup>50</sup>

Rwandan law says little about refugees. The **Immigration and Emigration in Rwanda Law** defines a refugee as a person who has fled his or her country as defined by the 1951 Refugee Convention. Article 29 provides that the Directorate General in collaboration with the United Nations High Commission for Refugees (UNHCR) may issue a refugee travel document to eligible refugees residing in Rwanda. Refugee issues are addressed mainly through government policy, managed by the Ministry of Disaster Management and Refugee Affairs. The Rwandan Government is prioritizing incorporating refugees into economic development. According to UNHCR, the main protection needs for refugees are SGBV prevention and response and child protection, in addition to assistance in education, shelter, water and sanitation for refugees, and assistance in reintegration for returnees. UNHCR is working with central and local government authorities to provide these services.

## 1325 National Action Plan

Although it had already taken many positive steps in its post-conflict period, in line with its international obligations Rwanda undertook to create a 1325 National Action Plan (NAP). The comprehensive process began with a baseline study highlighting the country's main achievements since 1994 and current challenges in women's roles in conflict management. The development of the NAP was participatory, led by the Ministry of Gender and Family Promotion and including stakeholders from the public and private sectors, civil society and UN agencies. The persistent challenges identified in the study included lack of appropriate frameworks for interventions; few women in national police, army and peacekeeping missions; lack of a 1325 action plan; persistence of genocide ideology; feminization of poverty; and the persistence of cultural barriers to women's rights.<sup>51</sup>

In order to address these challenges, the NAP includes five priorities:

1. Prevention of violence and conflicts through an emphasis on the rule of law and legal frameworks, with special attention to international obligations:
  - Dissemination of national and international laws related to women's rights
  - Revision of discriminatory national laws
  - Identification of discriminatory practices and adoption of strategies to address these challenges
  - Ensuring the ratification of international laws and conventions and subsequent adoption of national laws in line with these obligations

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<sup>50</sup> UNHCR, *2014 UNHCR operations country profile – Rwanda*, <http://www.unhcr.org/pages/49e45c576.html>. According to the cessation clause of the Refugee Convention, which defines the status of refugees, Rwandan refugees around the world ceased to have refugee status in June of 2013, as Rwanda was deemed safe for return.

<sup>51</sup> Republic of Rwanda National Action Plan 2009-2012, May 2012, 7.

2. Protection of women's rights and the special needs of women through:
  - Training of peacekeeping and security forces on international law and gender-based violence
  - Establishing community services such as legal and psychosocial assistance for victims of gender-based violence
3. Reinforcement of women's participation in decision-making.
4. Peace building and empowerment activities in social and economic reconstruction, including community dialogue and sensitization of men on gender issues.
5. Coordination, follow-up and evaluation of implementation activities including through international mechanisms and meeting with other countries in the Great Lakes Region.

The NAP thus clearly identifies the importance of international instruments and the need to tie 1325 to rule of law in order for it to be fully implemented at the national level.

The NAP also includes budget estimates for activities and running expenses, to be integrated into institutions' existing plans of action and budgets, showing again the recognition in Rwanda that policies must be tied to funding in order to be successful. Though the government already has a policy of gender responsive budgeting, it is not clear that the activities of the NAP have been fully funded, as the 2012 Civil Society Monitoring Report indicates that the government should fully fund national policies and legislation to ensure women's participation at all levels, including the grassroots levels.

The Monitoring Report notes that Rwanda has made significant advancements in implementation of 1325, in addition to the gains it had already made prior to launch of the National Action Plan. One of the main challenges in implementing the NAP remains effective action and programming at the local levels. The NAP ran through 2013 and is currently under review.

## JUSTICE

### Judiciary

As established under the Constitution, the ordinary jurisdictions of the judiciary are the Supreme Court, the High Court of the Republic, the Provincial Courts and the Court of the City of Kigali, the District Courts, and the Municipality and Town courts. The specialized jurisdictions created under the Constitution were the *Gacaca* and Military courts.

In terms of participation, women generally are well represented in Rwandan courts, though in 2012 they remained under the 30 percent threshold representation in the High Courts and Commercial Courts.<sup>52</sup>

In Rwanda, the Constitution is the supreme law of the land. Next comes ratified international law, which according to Article 190 of the Constitution takes precedence even over domestic law. Thus lawyers can cite to international conventions directly in their arguments and judges can cite to them in their opinions. It is therefore important that both lawyers and judges be prepared to use Rwanda's international obligations, in addition to its domestic law, in cases involving gender equality and women's rights, so that they are able to use all of the legal instruments available to their maximum potential.

### Transitional Justice

The justice system in Rwanda is deeply rooted in the genocide experience and the country's need for justice and reconciliation. Like many internal conflicts, the 1994 genocide left the formal justice system in tatters. The murder of close to one million people in the span of three months left the country's population traumatized and its infrastructure decimated. When the Rwandan Patriotic Front (RPF) took power in July 1994 after ending the genocide, it was confronted by the need to deliver justice for the killings of more than three-quarters of the country's Tutsi population, as well as numerous Hutus who opposed the genocide or tried to protect Tutsis.

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<sup>52</sup> 2012 GNWP Civil Society Monitoring Report, 6.

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

- Sheick Saleh Habimana, Rwanda Governance Board<sup>53</sup>

Since then, Rwanda has pursued an ambitious justice and reconciliation process with the ultimate goal of all Rwandans once again living side by side in peace.

In the years following the genocide, more than 120,000 people were detained and accused of bearing criminal responsibility for their participation in the killings. In addition, over 250,000 women had been raped.<sup>54</sup> To deal with such an overwhelming number of perpetrators, a judicial response was pursued on three levels:

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

### **International Criminal Tribunal for Rwanda (ICTR)**

In the wake of the genocide Rwanda looked to the international community for help. The government felt that the rule of law was critical in ending the culture of impunity that had existed in the country since independence, and felt that justice was the path to national reconciliation.<sup>55</sup> The UN Security Council established the Tribunal in Arusha, Tanzania in November 1994 to prosecute the highest level perpetrators for the genocide and crimes against humanity committed in Rwanda between January 1 and December 31, 1994. The ICTR has been instrumental in developing international criminal law around sexual and gender-based violence and the violation of women’s rights. In 1998 the Tribunal issued its first conviction on charges of genocide against the former mayor of the Rwandan town of Taba, Jean-Paul Akayesu. He was also found guilty of rape and other inhumane acts of sexual violence. The *Akayesu* case was a landmark case in defining rape and sexual violence, and stating that rape and sexual assault could be considered genocide when carried out systematically with the intent to destroy, in whole or in part, a targeted group. The conviction of the prime minister during the genocide, **Jean Kambanda**, to life in prison in 1998 was the first time a head of government was convicted for the crime of genocide.

The Tribunal completed the trial phase of its mandate in December 2012. Of the 93 individuals indicted for genocide, crimes against humanity and war crimes, 83 have been arrested with 75 of them prosecuted to judgment; 65 of those tried were found guilty and convicted, while 10 of the accused have been acquitted. Nine accused are still at large.<sup>56</sup>

The ICTR is expected to conclude its work by the end of 2014. After that, the International Residual Mechanism for Criminal Tribunals (IRMCT), set up by the UN Security Council in December 2010, will take over and finish the remaining tasks of the ICTR. The ICTR branch of the Residual Mechanism began to function on July 1, 2012.

### **National Court System**

Although the ICTR was set up to try the highest level perpetrators, the vast majority of the genocide cases had to be handled at the national level. In terms of transitional justice, Rwanda’s national courts prosecute those accused of planning the genocide or of committing serious atrocities, including rape and sexual violence. The 1996 Organic Law on the Organization of Prosecutions Constituting the Crimes of Genocide or Crimes Against Humanity Committed since October 1990 provides a framework for trying genocide related cases. The law recognizes the importance of women and the severity of crimes committed against them by placing crimes of

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<sup>53</sup> Interview with Sheick Saleh Habimana, Rwanda Governance Board, Kigali, December 13, 2012.

<sup>54</sup> Outreach Programme on the Rwanda Genocide and the United Nations, *Background Information on the Justice and Reconciliation Process in Rwanda*, <http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml>.

<sup>55</sup> Kaley Nash, “A Comparative Analysis of Justice in Post-Genocidal Rwanda: Fostering a Sense of Peace and Reconciliation,” *Africana*, Vol. 1, No. 1, 2007, 73.

<sup>56</sup> UN Outreach Programme, <http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml>.

rape and other sexual torture under Category 1, the most serious of crimes, which may be punishable by death. The law initially authorized only national courts to hear Category 1 crimes.

The task facing the courts, however, was daunting, due to the sheer number of individuals accused, the destruction of the system, and the fact that most prosecutors and judges had been targeted and killed during the genocide, leaving the court system with little capacity.

Between December 1996 and December 2006, the national courts had tried approximately 10,000 of the more than 120,000 genocide suspects that were awaiting trial. In 2007, the Rwandan government abolished the death penalty, which had last been carried out in 1998 when 22 people convicted of genocide related crimes were executed. This development removed a major obstacle to the transfer of genocide cases from the ICTR to the national courts.

In July 2011 the ICTR transferred its first case to the Rwanda's national court system for trial.<sup>57</sup> The referral chamber said it was convinced that, based on evidence, Rwanda had the ability to accept and prosecute Mr. Uwinkindi's case. "In reaching its decision, the chamber noted that Rwanda had made material changes in its laws and had indicated its capacity and willingness to prosecute cases referred by ICTR adhering to internationally recognized fair trial standards enshrined in the ICTR Statute and other human rights instruments," the tribunal said in a statement to the media.<sup>58</sup>

Domestic prosecution of genocide cases is becoming increasingly important because the mechanisms created to bring accountability for the Rwandan genocide are wrapping up their work. The *gacaca* courts, discussed below, finished their work in June 2012, and the ICTR plans to complete its work by the end of 2014.

### ***Gacaca Courts***

As the national court system struggled to deal with the number of genocide cases that needed to be tried, and seeing that in many ways the punitive justice of the ICTR and national system was not working in terms of justice and reconciliation at the grassroots level, the government looked to the traditional system of community-based *gacaca* courts to promote restitution and national reconciliation. Human Rights Watch deemed it "one of the most ambitious transitional justice experiments in history, blending local conflict-resolution traditions with a modern punitive legal system to deliver justice for the country's 1994 genocide."<sup>59</sup>

*Gacaca*, meaning "judgment on the grass" in Kinyarwanda, offered a pragmatic and community-based solution to the challenges facing the Rwandan government. In its pre-colonial form, *gacaca* was used to moderate disputes concerning land use and rights, cattle, marriage, inheritance rights, loans, damage to properties caused by one of the parties or animals and petty theft. *Gacaca* was intended to restore harmony and social order through truth telling, retribution, compensation to victims and reintegration of the perpetrator into the community. The process consisted of a meeting convened by elders and was settled only with the agreement of all parties.

In 2002, the Government launched a contemporary form of *gacaca* to try genocide cases coordinated by an institution that later became known as the National Service of Gacaca Jurisdictions (SNJG). The 2003 Constitution established a modified system of *gacaca* courts charged with the trial and judgment of cases against persons accused of the crime of genocide and crimes against humanity which were committed between October 1, 1990 and December 31, 1994, with the exception of cases whose competence is vested in other courts. The first *gacaca* trials began in 2005.

In the *gacaca* system, communities at the local level elected lay judges from the community to hear the trials of genocide suspects accused of all crimes except those listed in Category 1. The courts gave lower sentences

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<sup>57</sup> The case of Jean Uwinkindi, a former pastor, who was accused of being responsible for attacks of ethnic Tutsis in his church in the Kigali-Rural prefecture and other areas during the genocide.

<sup>58</sup> UN News Service, *UN Genocide Tribunal Refers Case to Court System for the First Time*, allAfrica, July 5, 2011, <http://allafrica.com/stories/201107051136.html>.

<sup>59</sup> Human Rights Watch, *Justice Compromised: Legacy of Rwanda's Community-Based Gacaca Courts*, 2011, 1.



if the person was repentant and sought reconciliation with the community. As a community-based institution, participation was mandatory for everyone and legal professionals generally were not involved in the proceedings. Judges were provided basic training by the SNGJ, and the community at large served as the General Assembly. From the community's reports, dossiers were compiled about what transpired in a particular community during the genocide, and judges relied on these dossiers to conduct hearings.

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

Due to the slow pace of the national courts, in May 2008 the Rwandan Government passed a new law that transferred most of the remaining Category 1 cases to the *gacaca* courts, including cases of sexual violence. Just over 8,000, or 90 percent of these cases, involved rape or sexual violence.<sup>60</sup> The law provided that such cases would be heard behind closed doors in order to protect the victims' privacy. However, even with this provision, the community-based nature of the *gacaca* system often made it impossible to protect victims' identities. Many questioned whether this was an appropriate forum for trying cases of rape and sexual assault, and there were serious concerns regarding protecting women from invasions of their privacy, reprisals from the accused and from the community, and biases by judges with ties in the community.

Additional problems in the *gacaca* courts included allegations of corruption, extensive government interference, refusal to prosecute RFP violations and the curtailment of fair trial rights. Reviews of the *gacaca* have been mixed. It was able to bring a swifter justice to the community, allow for more restorative justice and provide for the participation of women. However, there were many issues in implementation and clear challenges in trying cases related to sexual violence. Between 2005 and 2012, more than 12,000 community-based courts tried more than 1.2 million cases throughout the country. The *gacaca* courts officially closed on May 4, 2012.

## CONCLUSIONS AND RECOMMENDATIONS

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

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

- Strengthen awareness programs on gender equality, especially aimed at opinion leaders and communities.
- Strengthen the capacity of civil society to advocate at the grassroots level.
- Provide land rights for women who are unmarried.
- Strengthen advocacy efforts to ensure that all stakeholders meet their obligations to provide the necessary services at the local levels.
- Increase legal assistance for victims of gender-based violence.
- Provide rights awareness education.

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<sup>60</sup> Ibid at 113.



- Increase community dialogue on gender-based violence.
- Sensitize men on gender issues.
- Build the capacity of government officers to perform gender analysis and gender budgeting.
- Fully fund national policies and legislation to ensure implementation at all levels, including the grassroots level.