

Challenges and loopholes in the implementation and enforcement of international conventions and protocols on the vulnerable groups of human society: Lived experiences of women in conflict situations

Barbra Mapuranga

Zimbabwe Open University, Mashonaland East Region

Abstract

This conceptual paper examines difficulties in the implementation of international conventions and protocols on women in conflict situations. In recent decades there has been a growing international interest on issues pertaining to women. With a full understanding of the unique impact of the war situation on women the international community has put in place laws to safeguard women's rights in those situations. Unfortunately there are a number of difficulties in the enforcement and implementation of these international laws. Denying the existence of the conflict situation, a weak legal framework, patriarchy, gender inequality, impunity, insufficient data and research and other factors will be discussed here as difficulties that counter the enforcement and implementation of international conventions and protocols on gender and women's rights in conflict situations.

Key words: vulnerable groups, challenges, loopholes, conventions, protocols, conflict, women.

1. Introduction

The 1995 Beijing Platform for Action Conference had amongst its objective, a task to spearhead the involvement of women in decision making positions including in the political arena and various influential positions. This was mainly emphasized in a bid to promote democratic and constitutional reforms throughout in order to generate equal opportunities for women and men to participate at all levels of political process, including election to the highest office and also have to voice of women be heard during conflict situations. There are indications that fewer women than men are presented for selection in decision making positions. The situation is worse in conflict situations.

2. Definition of Terms

Conflict situation: A conflict is a situation of open fighting in a battle or war. There are three types of conflict situations that are recognized by international humanitarian law. The first is the international armed conflict which refers to all cases of declared war or of any armed conflict that may arise between two or more high contracting parties... (Geneva Convention, 1949) The second one is a situation of internationalized armed conflict which occurs when a war erupts between two different factions fighting internally but supported by two different states (Stewart, 2003). The third one is called the non-international armed conflict which is a more localised/national conflict situation which is not the same as riots or general violence (Vite, 2009).

International convention: an international agreement between countries. These are usually developed by the United Nations or other international organizations. Governments that ratify conventions are obliged to incorporate them into their own laws and to make sure that these laws are applied and respected (United Nations, 2015). In relation to gender and women rights the international conventions that can be stated include the Convention on the Elimination of All Forms of Discrimination Against Women (1979), Beijing Declaration and Platform For Action (1995), The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (200)

In **international** politics, **protocol** is the etiquette of diplomacy and affairs of state. It may also refer to an **international** agreement that supplements or amends a treaty. A **protocol** is a rule which describes how an activity should be performed, especially in the field of diplomacy. In this paper a protocol will refer to agreements that supplement a treaty.

3. International Conventions and Protocols

The purpose of international conventions in general is to act as international statements or guidelines that are legally binding to the contracting States. Existing international conventions cover different areas like trade, science, crime, disarmament, transport, and human rights. A convention becomes legally binding to a particular state when that state ratifies it. Signing does not make a convention binding, but it indicates support for the principles of the convention and the country's intention to ratify it. As contracting states are legally bound to adhere to the principles included in the convention, a monitoring body is often set up to assess state parties' progress in implementing the convention by considering reports periodically submitted by states. Human rights conventions do not contain any enforcement mechanism to compel states to comply with the principles of the

convention or with the recommendations of the monitoring body, and the implementation of these conventions depends on the commitment of each country. Some of these international conventions include the Geneva Conventions, Convention on the Elimination of All Forms of Discrimination Against Women (1979), Beijing Declaration and Platform For Action (1995), The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (2003), the UNSCR 1325, The UNSCR 1820 (2008), UNSCR 1888 (2009) and the UNSCR1889 (2009).

4. Challenges to Implementation and Enforcement

Although there has been a significant increase in commitment to implement United Nations Security Council Resolution (UNSCR) 1325 in the past years, notably in countries experiencing conflict, its enforcement and implementations remains a hurdle because of cultural roles linked with women. Culturally, a woman's place is in the home, taking care of the children, cooking and pleasing the husband. Research has shown that women in conflict situations take up their gender roles as they participate. They are seen to assume their gender roles of cooking, providing comfort to men, cleaning and serving while others join the armed combatants or do both (Coutler et.al: 2008). However, the resolution 1325 is in agreement with the Beijing Convention recommendation and various other protocols that call for the active role of women in peace building as well as peace missions.

One factor which contributes to the challenges of implementing gender and women conventions and protocols happens when national leaders find it prudent to deny the existence of a conflict situation. India has been experiencing war since 1989 and a number of armed groups were fighting either for independence, for integration into Pakistan or for mere autonomy in Jammu and Kashmir (Drahonovska, 2010). In the same country Northern Eastern States like Assam, Manipur, Mizorum and Nagaland also experienced separatist group insurgency and more than 40000 people were killed. A further 6000 people were killed from Maoist Insurgency. Despite all these atrocities India did not proclaim these regions as conflict zones and it denied the affected population the protection they deserved from the Geneva Conventions (Drahonovska, 2010).

One of the reasons is the conflict between the existing domestic laws and the proposed amendments recommended by the international conventions and protocols. The challenge of operating mixed legal systems affects the effective domestication and implementation of treaty obligations, and enforcement of women's rights especially during conflict is being hampered by the persisting, negative attitudes and perceptions of society towards gender equality and women's empowerment. This has obvious adverse effects in the implementation and enforcement of international protocols and conventions on gender and women's rights (Economic Commission for Africa: 2010).

A weak legal framework also stands as a challenge in the implementation of international conventions and protocols on gender and women's rights (UN Women, 2014). Observations made indicate that there are no binding international conventions of the protection of women in armed conflict (Drahonovska, 2010) reference can be made to the statement in bold in the above statement .The provisions specifically dealing with gender and women's rights are found in humanitarian law and other conventions addressing issues affecting both men and women.. The fundamental rights of all human being exist in the Universal Declaration of human Rights, the International Covenant on Economic, Social and Cultural Rights. These provide human rights of all sexes without discrimination. Other related human rights instruments include the Convention the Convention on the prevention and Punishment of the Crime of Genocide, the international Convention on the Elimination of all forms of Racial Discrimination and the convention of the rights of the child among others (Drahonovska, 2010). In such a situation women are protected by customary humanitarian law .A critical analysis of these laws show that the ordinary humanitarian law fail to sufficiently address the problems that women face in conflict situations.

The other difficulty emanates from the fact that the conventions are written from a male perspective ignoring specific issues on women. Using a masculine perspective, most of the humanitarian laws focus more on women's sexual and reproductive roles. They aim at advantaging children especially when provisions are stated for pregnant and nursing women. In such a situation the gendered nature impact of conflict is ignored in most cases. Even the United Nations Security Council Resolution 1325 of 2000, Resolution 1820 of 2009 and Resolution 1888 of 2009 concentrate mainly on condemning sexual violence on women in conflict situations ignoring other issues relating to the gendered nature of conflict situations. To a larger extent sexual violence in conflict situations has received significant attention and a number of measures have been put in place at international level to address that yet there are other areas of women's experiences in conflict situation which remain insufficiently addressed (Drahonovska, 2010). To address issues of sexual violence in conflict situation International Tribunal for the former Yugoslavia and the Criminal Tribunal of Rwanda were put in place and these managed to successfully persecute perpetrators of grave breaches of the Geneva Conventions (1949) and they passed several rulings on sexual violence.

The lack of implementation strategies is another challenge faced in the enforcement and implementation of

international conventions and protocols on gender and women's rights in conflict situation (Gender Monitoring Office, 2011). In a majority of cases the international instruments are unconsciously implemented without an implementation plan and no clear definition of institutional responsibilities. In some cases where the machineries exist they are found to be in their early stages of development (UN, 2013). In the Democratic Republic of Congo it was observed that the ministry responsible for gender affairs received a meagre 0.002% of the national budget. (Gender Monitoring Office, 2011). This scenario was also evident in Yugoslavia and a number of developing nations in conflict situations. To add to that when national issues relating to gender and women's right are being addressed very little reference, or non at all, is made of international or regional instruments. The existence of limited gender disaggregated data in crisis situation also lead to complexities in monitoring and evaluation of gender and women's rights conventions and protocols especially in situations when nations signed the agreements but failed to domesticate the convention in the nation's legislature.

The other problem relates to the small numbers of women in public decision making. This applies to national parliaments, local councils and peace keeping missions (TST Issues in brief, 2015). Globally there are very few celebrated cases of women in decision making. Despite dotted cases of the positive development when women occupy key decision making positions the UN (2013) established that it is only about 1 in 5 parliamentarians who are women. As at January 2012 only 17 % of government ministers were women (Inter-Parliamentary Union, 2012). Only 8 women served as head of state and 13 served as head of government as at June 2013 (UN Women, 2014). In peace keeping, of the 14 peace keeping negotiations held under the UN auspices in 2011 only four of the negotiating party delegations included a woman delegate (UN, 2012). To add to the low numerical representation, women are also under represented in status. In Afghanistan there is no woman governor. This underrepresentation of women is attributed to a number of historical, cultural and economic inequalities that persist between man and women across all societies. These inequalities often make women appear as informal participants in conflict situations. In the Timor Leste conflict situation women in senior government positions and civil society were not considered as peace mediators (UN, 2014).

Another factor which stands as a challenge to the implementation of gender and women's rights conventions and protocols is the existence of prohibitive cultural barriers (UN 2013) In Afghanistan the Sharia law has primacy in the nations legal system and the constitutional provisions of the Penal Code even worsens the situation. Most judges rule based on their own understanding of Customary Law In addition, customary law interacts with both Sharia and Afghan legislation (Global Monitoring Checklist on Women peace and Security, 2011). An estimated 80 percent of cases are settled in Afghanistan through traditional customary dispute resolution systems and not via codified law, making it the 'de facto legal system for the most part in Afghanistan. Customary law mechanisms actually often serve to perpetuate violence against women rather than offer a remedy to it. The state has utterly failed to monitor these mechanisms and to hold them accountable to Afghan law (Global Monitoring Checklist on Women peace and Security, 2011).

From these cultural norms national governments find themselves incapacitated to develop the appropriate political will to implement commitments to gender equality (Musa, 2007) The lack of political will contributes greatly in the delay or blockage of local-level gender-sensitive interventions especially in conflict situations.

The impunity that is enjoyed by some state actors as well as international agents on peace keeping also comes in as a challenge on the implementation of gender and women's conventions and protocols on gender (Musa, 2007; UN, 2014; Manjoo and McRaith, 2004). In the Democratic Republic of Congo cases of severe gender based violence have been consistently brought to the attention of the UN and other international bodies. In the year 2001 Report of the Special Rapporteur on Violence Against Women noted that all of the armed forces had committed serious abuses against women. Even the peacekeeping members of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (DRC) committed grave abuses against Congolese women. Despite the new legislation that was put in place to counter those atrocities violence against women in Eastern Congo continued unabated (Manjoo and Mac Raith, 2004). In the 2009 Report of the Secretary-General on Resolution 1820, the Secretary General stated that over 200,000 cases of sexual violence in the DRC had been recorded since 1996. Increased violence was experienced from both state and non-state military forces, including the Rwandan militia (FDLR), the Lord's Resistance Army, the FARDC, the Congolese National Police (PNC), and the Rwanda Defence Forces (RDF) (Manjoo and Mc Raith, 2004) Despite the presence of UN peacekeeping forces these atrocities against increased. There was also a general ineffective protection of citizens. The pervasive impunity that these perpetrators enjoyed stands as an explanation of all these atrocities which made it very difficult to implement gender and women's rights conventions and protocols. UN (2013) observed that the impunity is the evidence of inadequate legal protection and enforcement and poor implementation of national commitments on gender and women's rights. The impunity is further justified by customary law used to direct informal justice mechanisms and the customary approaches to justice may be contradictory to international human rights standards (UN 201). Continued impunity for perpetrators of gender-based crimes remains a major problem in both conflict and post conflict situations (Manjoo and Mac Raith, 2004). In the two civil wars of Liberia which took place between 1979 and 2003 and the Guatemala conflict

perpetrators of atrocities against women the impunity of the perpetrators incapacitated the implementation of international protocol on gender and women's rights.

The other challenge that these international commitments face is the inadequacy of budget allocations, insufficient institutional staffing and weak infrastructural development (Muza, 2007). Limited funding also contributes to limited skills and knowledge on preventing violence against women. Observations made by the Global Monitoring Checklist on Women Peace and Security (2011) showed that in the DRC the National Commission for Human Rights which aims at harmonising international instruments that the DRC signed and ratified fails to operate at its full capacity due to lack of financial support. The DRC is a member to CEDAW and the UNSCR 1325. In Nepal there is nothing known about the ministerial budget allocated at grassroots organisations for UNSCR 1325 initiatives (Global Monitoring Checklist on Women Peace and Security, 2011). As a result most of these initiatives encounter high staff turnover which makes it very difficult to retain skilled and experienced staff (UN Women, 2013)

Weak coordination and monitoring mechanisms at national levels was mentioned by Muza (2007) as one of the difficulties that is faced when attempts are made to implement gender and women's rights international instruments and protocols. This normally happens when there is no coordination and proper monitoring of the implementation of policies and programmes across governmental and non-governmental bodies working on the issue (Muza, 2007). In the DRC talks, the Goma Agreement (2008) has one reference to rape and SGBV that reads: 'all parties hereby agree to the cessation of all acts of violence in all forms towards the civilian population, particularly women and children, the elderly and handicapped'. This is a clear indication of a very weak commitment to the issue of women's rights at national level. Even the Nairobi Peace Agreement (2009) on DRC also fails to mention the victims of SGBV during the conflict between the government of the DRC and National Congress for the Defence of the People (CNDP). The parties involved in these agreements failed to give meaningful attention to the protection and / or the participation of women in peace building. In such cases very little room or none at all is left for international conventions and protocols on women to operate in conflict situations.

The other difficulty is insufficient data and research (UN Women, 2013). This refers to the lack of statistical data on the magnitude, nature and consequences of violence against women and girls. For example in Afghanistan the research and evaluation Unit (AREU) indicated that there is little, if any, funding for gender mainstreaming initiatives. If surveys are carried out they do not capture all forms of violence. They also do not capture variations among different groups of women in particular country. It also fails to give gender disaggregated information (UN Women 2013). In the absence of research it becomes difficult to establish achievements and areas that need urgent attention. High impact advocacy messages that are not backed by hard data also hinder ongoing efforts to ensure policy commitments and investments (UN Women 2014). Insufficient research data highly contributes to limited attention to neglected groups and issues (Muza 2007) Some of these specific issues relate to the consequences that women and girls suffer due to femicide, HIV and AIDS and how it relates to gender based violence in conflict situations, political violence targeted on women in conflict situation among other abuses both private and public. The absence of research on such issues hinder the implementation of effective programmes, strategies and approaches as they are recommended by the international instruments on gender and women's rights (Global Monitoring Checklist on Women Peace and Security, 2011). In the absence of research data it is very difficult to put in place appropriate monitoring and evaluation frameworks and activities (Muza, 2007).

The other difficulty manifests when there is limited scope and coverage of services and interventions (UN 2013). This happens when the numbers of the people affected are very limited in scope and reach. This difficulty is closely linked to insufficient investments made in addressing existing problems. Even if some services exist they may be concentrated in urban areas or larger cities. These services at times lack the coordination and the referral capacities required. Many of the services like safe houses, legal aid and other support structures are provided by nongovernmental organisations which are lacking in financial and other resources (UN Women 2013).

The other factor is the low demand of the services by the victims. This comes into play especially from the systematic discrimination that women face from the institutions and communities that surround them. Some of the factors include the fear of stigma from community members, family and friends, the attitude of service providers especially health personnel and police, limited legal knowledge, inability to access services due to poverty, restricted decision making in the household and many other factors .

The fragmentation of efforts also stands as a difficulty in implementing the conventions. This happens when interventions are planned and implemented in isolation from one another. This creates gaps in the way interventions are applied. A combination of factors can lead to the fragmentation of effort. It can be a result of poor funding resulting from poor political will to cultural and religious norms that are prohibitive. In the efforts to address the situation of women and girls in conflict situations are fragmented it also stand as difficulty in addressing women's problems emanating from the crisis situation.

From the difficulties discussed in this paper recommendations that can be made to policy planners and implementers are that:

- value the human rights of women as they are enshrined in the international code of human rights;
- prosecute and punish perpetrators;
- ensure equal protection of women under the law and equal access to justice and the elimination of all attitudes that foster, justify, tolerate violence against women;
- nations must be encouraged to sign, ratify and effectively domesticate international conventions and protocols on women's rights and the international community must impress upon nation to submit progress reports on the implementation of such policies so that interventions will be timely and appropriate to existing conditions; and
- come up with affirmative action policies at local and at global levels to ensure a more meaningful participation of women in decision making bodies especially in conflict and post conflict situations

References

- Debusscher , P. (2015) Evaluation of the Beijing Platform for Action +20 and the opportunities for achieving gender equality and the empowerment of women in the post-2015 development agenda. Available From:
[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519191/IPOL_STU\(2015\)519191_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519191/IPOL_STU(2015)519191_EN.pdf)
- Drahonovska, S. (2010) Womens Rights In Conflict Zones : A focus on India [Online] Available from :
<http://www.hrln.org/hrln/images/stories/pdf/Report%20-%20Women%20Rights%20in%20Conflict%20Zones%20-%20A%20Focus%20on%20India.pdf>
[Accessed on 14 September 2015].
- Gender Monitoring Office (2011) Assessment of Gender Related international and regional Instrument and their implementation in the Republic of Rwanda. Kigali 2011 .
- Geneve Conventions (1949) Convention for the Amwlioration for the Wounded and Sick in Armed Conflicts In the Field
- Global Monitoring Checklist on Women, Peace and Security (2011) Afghanistan, Democratic Republic of Congo, Nepal , Northern Ireland and Sri Lanka
- Inter-Parliamentary Union (2012) Women in Politics Calculated by UN Women, checked monthly against updates from the United Nations
- Manjoo , R and Mc Reith, c. (2004) Gender based Violence and Justice in Conflict and Post Conflict Areas [Online] Available from : <http://www.lawschool.cornell.edu/research/ilj/upload/manjoo-mcraith-final.pdf> [Accessed on 10 October 2015)
- Musa , R. (2007) Women Equality and the Human Rights System
- Stewart , G.(200) Towards a Single definition od Armed Conflict in International Humanitarian Law , Opinion Ppaer Geneva .
- TST Issues in brief (2015) Gender Equality and Women's Empowerment [Online] Available from : https://sustainabledevelopment.un.org/content/documents/2396TST%20Issues%20Brief%20GEWE_FINAL.pdf [Accessed on 12 September 2015]
- UN (2010) Ten Year Impact Study on Implementation of the UN Security Council Resolution 1325 (2000) on Women, Peace and Security in Peace keeping .
- UN Women (2014) Virtual Knowledge Centre to End Violence Against Womwne and Girls [online] Available from : <http://www.endvawnow.org/en/articles/303-main-challenges.html?next=304>
- United Nations (2013) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) [Online] Available from : <http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf> [Accessed on 15 September 2015]
- United Nations (2013) The Millennium Development Goals Report 2013 ,New York
- United Nations (2015) Resources for Speakers on Global Issues [Online] Available from:
<http://www.un.org/en/globalissues/briefingpapers/childlabour/intlconvs.shtml> [Accessed on 12 September 2015]
- United Nations (2012). UN Secretary-General's report to the Security Council on Women, Peace and Security, S/2012/732, New York.
- Vite ,S. (2009) Typology of Armed Conflict in International Humanitarian Law . A Crutique of Internationalised Armend Conflict 85 (850) 313-315