

COLUMBIA JOURNAL OF TRANSNATIONAL LAW

Founded by Wolfgang G. Friedmann

Vol. 41

2003

No. 3

DISCUSSION

The Quest for Post-Conflict Gender Justice

Kelly D. Askin

Maximizing the Advancement of Women's Human Rights in Conflict-Transformation

The Case of Sri Lanka

Sunita Abeysekera

Improving the Status of Women in the Wake of War: Overcoming Structural Obstacles

Julie Mertus

The Central Role of Women: Waging Peace

Susanne Hunt

ESSAYS

The Evolution of the United Nations Position on Terrorism: From Exempting National Liberation

Movements to Criminalizing Terrorism: Wherever and by Whomever Committee

Melvina Halberstam

Article 113-7 of the French Penal Code: The Passive Personality Principle

Eric Caftiz and Omer Tsag

ARTICLES

Self-Determination in International Law and the Demise of Democracy?

Russell A. Miller

Aviation Security: The Role of Law in the War Against Terrorism

Paul Stephen Benney

The Duty to "Expect the Unexpected": Mitigating Extreme Natural Threats to the

Global Commons Such as Arctic and Coral Impacts with the Earth

Evan R. Semunt

A Comparative Analysis of International Regimes on Ocean and Climate Change with

Implications for Regime Design

Laura Thomas

LL.M. COMMENTS

Criminal Detention and Usual Laws: An Infringement on the Freedom of Expression in

Foreign and Post-Communist Jurisdictions

Fairness and Moral Judgments in International Criminal Law: The Sentencing Provision in the

Rome Statute

NOTE

Accounting for the Public Interest in International Arbitration: The Need for

Procedural and Structural Reform

BOOKS RECEIVED

INDEX TO VOLUME 41

agreement to develop a comprehensive human rights framework throughout the peace process, this acknowledgement of the significance of gender concerns within the ongoing process has made it possible for women's rights organizations to focus on the above issues. Attempts to consolidate the gains accomplished by women at great personal and social cost during the conflict, and the creation of structures for the official and legal recognition of the public roles occupied by women—both aspects that give women some degree of autonomy and independence—must become the major focus of this activity.

In a situation where "normalcy" has meant subordination, exposure to violence, and denial of autonomy and dignity, understanding the dilemmas encountered by many women who are contemplating a return to genuine "normalcy" as a part of the peace process is essential. Those who are active in the peace process at any level must address these concerns. They must ensure that, rather than being further pushed into their victimhood and rather than becoming mere objects worthy of "care" and "protection" by men and the patriarchal state, women who have overcome the "cavalry" of life during conflict with courage and determination have thereby been empowered to continue living their lives in dignity and respect. Much work remains to be done in areas of social and cultural transformation, as part of the process of conflict-transformation and peace building, if the rights of women are to be recognized and respected in the post-conflict era in Sri Lanka.

Improving the Status of Women in the Wake of War: Overcoming Structural Obstacles

JULIE MERTUS*

The first day the NATO planes began to bomb was on the 24th of March, a Wednesday. Our villages were surrounded with military and Serbian police. On Thursday, the houses began to burn [in the village "Krisha e Vogel"]. We who were on the other side of the River Drini saw what was happening. There was smoke and flames, rising and spreading.

That same morning a family came down our road on a tractor. They were from that village on fire. They did not have the words to explain how they escaped. All they could say is a policeman came and told them to go across the river and get out of the village. They were shaken and scared. I took them into my family's home and I was scared about what was happening.

On Friday morning, the houses were still burning. From the front door of my mother's house I could see a lot of people leaving the village and heading toward the river. People in my village were scared to do anything. I told my mother that I must go help. She pled with me to stay, but I insisted. My brother got our tractor and went with me.

When we got down to the river, we saw that they were all women and children—some very small children, some babies. They were crying, shouting. At the moment we got closer, everyone began to scream, "please help us, please help us." They told us that for two days and two nights, forces had surrounded their village. During this time, the people didn't have food, didn't have water, and their houses were burning. The

* Assistant Professor, American University, School of International Service, J.D. (Yale Law School). The author wishes to thank Janet Lord, Laurie Rosenberger, and the editors of this journal for their comments and suggestions.

police separated the women and children from their men. They threw them out of their homes. The police directed the women to take their children and go down them and themselves in the river.

At that moment I was no longer afraid. I knew what we had to do. The people all wanted to get on the tractor at the same time. So I said, "Do not be afraid, we can take you all." I stayed on the far side of the river bank and helped women and children to get onto my brother's tractor. He drove them to the other side. Eventually, some other people from our village came with tractors and began to help. And, back and forth and back and forth like this . . . we brought over about 500 of them. The river was deep, strong and very cold. We were afraid the whole time that someone would fall in or that the water would rise too high and swallow the tractors.

After about an hour and a half, almost everyone was at the other side. There was one very old woman walking with two younger women and three children. They weren't yet at the river. I went to get them. At that moment, police started to lob grenades over us. I told them to keep moving and somehow we got them over the river.¹

Marta learned later that Serbian police and paramilitary had attempted to murder all 120 of the men in the village. Some were tied and burned alive in their houses; others were shot execution-style in mass pits. Two men escaped the massacre by feigning death while the other bodies piled on top of them. After the military left, they crawled from underneath their dead friends and ran to Marta's village. Less than two days later, the entire village fled across the mountains into Albania.

When the NATO bombing ended, the women from Krusha e Vogel returned as soon as they could. They discovered a ghost town. All of their Serb neighbors had fled. While every Serbian house remained standing, Albanian homes had been razed to the ground. Picking through the scarred landscape, the women found the charred remains of many of their men. In a rage, the women set fire to the Serbian homes, burning them to the ground. The next thing they did

1. Interview with anonymous, in Krusha e Vogel, Kostova (Aug. 2000).

was to make makeshift homes for themselves and learn how to perform the farming tasks normally undertaken by men. With the help of a local woman's group that was founded during the war and funded by western European donors, the women learned how to drive and became proficient in running their own farms.

Today, although a handful of men have returned and a few boys have matured to manhood, the village remains populated largely by women and children. Although life is hard, by all accounts the women are doing extremely well. In contrast to the pre-war times, women have enhanced decision-making authority in village life. Among the successful business ventures, they grow grapes that are shipped to Slovenia and bottled under a Slovenian label. They also run a driving school in nearby Prizren, operate a small library, and staff a women's center that, among other purposes, serves—in the words of one teenager—"as a place just to be and to be sad." Although the education level of girls remains low compared with that of boys, more girls are enrolled in school for longer periods of time than prior to the war. Moreover, contact with visiting journalists and humanitarian assistance workers has created greater awareness among women as to the larger legal, social and political issues affecting their lives.

Is this case an illustration of the ways in which women and girls can gain rights as a result of violent conflict? Not exactly. The case is a good example of the short-term gains women might experience in wartime as they learn new skills and develop self-esteem and decision-making capacity while undertaking roles normally reserved for men.² However, the case also demonstrates that wartime power shifts in gender relations are likely to be superficial and short lived.³ Although the women of Krusha e Vogel are taking an active role in the reconstruction process, men are still in control of resources. The women of Krusha e Vogel are more likely than men to confront poverty, and less likely to be the recipients of foreign assistance. Moreover, despite the existence of formal legal

2. Patrick Matlou, *Upsetting the Cart: Forced Migration and Gender Issues, the African Experience, in ENCODING FORCED MIGRATION: THEORY AND PRACTICE* 128, 140 (Dorson, India ed., 1999); see also Vanessa Farr, *Gendering Demilitarization as a Peacebuilding Tool*, at 13-16 (June 2002) (Bonn International Center for Conversion Paper 20), available at <http://www.bicc.de/general/paper20/content.html>; DONNA RAMSEY MARSHALL, *WOMEN IN WAR AND PEACE: GRASSROOTS PEACEBUILDING* 8 (2000), available at <http://www.usjka.org/pubs/peaceworks/pwvks34.pdf>; Neziwawe Madlala-Routledge, *New Bridges to Peace: Enhancing National and International Security by Expanding Policy Dialogues Among Women* (Apr. 27-28, 2001) (occasional paper from Women in International Security workshop), available at <http://wis.georgetown.edu/Routledge.pdf>.

3. Matlou, *supra* note 2, at 140.

protections, cultural practices still weigh heavily against women and girls. Girls from this village "marry out" to men from other villages; once they leave they are considered the property of their husband and rarely return. Motherhood remains the defining role of womanhood and women have little control over the timing and number of children they bear. Reported incidents of domestic violence have increased in the post-war period in Kosovo, a reflection not only of an enhanced willingness to report such incidents, but also of a widespread culture of violence and a general backlash against women.⁴ Should a woman from Krusha e Vogel be abused by her husband or other male kin, the chances that her abuser would be convicted, even when evidence is presented, are extraordinarily low.⁵ Incidences of violence against women are not monitored by international organizations in Kosovo as are other forms of violence, such as ethnic and political violence, despite being at least as common.⁶

A 2002 report by the United Nations entitled *Women, Peace and Security*, noted that "[d]iscrimination against women and girls and gender inequalities can persist or deepen during the period after conflict, thereby limiting the opportunities of women and girls to play a significant part in the design and implementation of the peace and reconciliation process."⁷ The report recommended a rights-based approach to reconstruction as a way to avoid perpetuating situations of inequality and discrimination. Kosovo is a paradigmatic example of such an approach. There, a brigade of international lawyers and local and international women's human rights activists have tried to improve the laws and law enforcement practices on discrimination and violence against women in Kosovo. In these efforts they have used the language of rights and the instruments of democratic institution-building, undertaking such tasks as: fostering constitutional reform; enacting new legislation prohibiting discrimination and violence against women; introducing efforts to ensure that the legal system is sensitive to the particular needs of victims of sexual violence; recruiting and training women police

officers; and adopting affirmative measures to ensure women's participation in elections and presence in the legislature.⁸ Many of these measures have accomplished their goals: legal reforms have been enacted; judges and police have been trained on gender-based violence; women police officers have been recruited and women are participating in electoral politics. Why have these efforts had little impact on the lives of women? I suggest two propositions that can shed light on the answer to this question in the case of Kosovo and, perhaps, many other societies emerging from violent conflict.⁹ The first proposition points to the limitations inherent in a rights-based approach, and the second focuses on particular structural challenges to including women in the peacebuilding process.

I. A LIBERAL RIGHTS-BASED APPROACH IS INSUFFICIENT FOR IMPROVING THE STATUS OF WOMEN

The dominant assumption of post-conflict reconstruction and peacebuilding projects focusing on women is that women's equality with men may be promoted through a system of legally enforceable individual rights. R.J. Vincent helpfully explains this system of rights:

A right in this sense can be thought of as consisting of five main elements: [1] a right holder (the subject of a right) [2] has a claim to some substance (the object of a right), [3] which he or she might assert, or demand, or enjoy, or enforce (exercising a right) [4] against some individual or group (the bearer of the correlative duty), [5] citing in support of his or her claim some particular ground (the justification of the right).¹⁰

Under a rights-based approach, women are empowered as capable, autonomous subjects of the law (and not mere objects) and states (and, in some cases, other duty-bearers) are burdened with the duty to recognize and respond appropriately to their demands.¹¹

4. Interview with Sevdie Ahmet, Center for the Protection of Women and Children, in Pristina, Kosovo (Aug. 2000).

5. Chris Carrin, *Gender Audit of Reconstruction Programmes in South Eastern Europe* (June 2000) (Urgent Action Fund & The Women's Commission for Refugee Women and Children), available at <http://www.bndg.de/~wplare/GENDER-AUDIT-OF-RECONS TRUCTION-PROGRAMMES--csGAudit.htm>.

6. Kvina ili Kvinna, *Getting it Right? A Gender Approach to UNMIK Administration in Kosovo* (2001), at 19 (on file with author).

7. UNITED NATIONS, WOMEN, PEACE AND SECURITY: STUDY SUBMITTED BY THE SECRETARY-GENERAL PURSUANT TO SECURITY COUNCIL RESOLUTION 1325 (2000), at 111 (2002) [hereinafter WOMEN, PEACE AND SECURITY].

8. See *id.* at 112-15.

9. A cautionary note is in order before the lessons of Kosovo are applied elsewhere. Each conflict is different. The promise of positive social advances for women are greatest in cases like Kosovo where the struggle could be characterized as a "war of liberation" and where the political and social transformation of the society is the goal of the conflict (at least according to some fighters on one side of the dispute).

10. R.J. VINCENT, HUMAN RIGHTS AND INTERNATIONAL RELATIONS 8 (1986).

11. Jack Donnelly, *The Social Construction of International Human Rights*, in HUMAN

While the creation of legally enforceable rights has proven beneficial to many women, the rights-based approach carries several limitations, all of which have a high probability of being relevant in a conflict scenario. On a pragmatic level, the rights-based approach does not work unless the state has the capacity to recognize and respond appropriately to the rights claim. Yet in many cases, it was the inability or unwillingness of the state to respond in an efficient and civil manner to rights claims that caused the conflict to erupt.¹² Even in places like Kosovo, where internationals have poured resources into the creation of a rights-respecting police force and judiciary, the legal system may not be able to respond appropriately to women's claims. Michael Hartmann, the American installed as a local prosecutor in Kosovo, confirms that despite all of the law reform efforts in Kosovo, local police still do not have the ability to fairly and effectively investigate a domestic violence dispute. "It's not necessarily about not respecting women's rights," Hartmann says, "They just don't know how to do it. I'm talking the basics, how to get a fresh complaint, how to preserve evidence."¹³

In the same vein, a rights-based approach does not benefit women unless they have the capacity to access the rights framework and, even then, the potential advances are limited. As Nicola Lacey has noted, rights assume "a world of autonomous individuals starting a race or making free choices [which really has] no cutting edge against the fact that men and women are simply running different races."¹⁴ Thus, rights alone do not assure the advancement of women, but only promise the opening of choices to women, and really only to those who are in a position to exercise their decision-making autonomy. A lack of legal literacy is only one obstacle to the integration of a rights framework. Much to their dismay, human rights education specialists have found that even the women who are well-educated in their rights may be prevented by social and cultural forces from asserting them. For example, women may recognize their right to run for public office, but may be hindered by a lack of state-

RIGHTS IN GLOBAL POLITICS 71, 81 (Tim Dune & Nicholas J. Wheeler eds., 1999).

12. An example of such a conflict can be seen in the violence that female anti-apartheid activists experienced in Apartheid South Africa, which was qualitatively different than the violence experienced by non-activist black South African women. Aontie Krog, *Locked into Loss and Silence: Testimonies of Gender and Violence at the South African Truth Commission*, in VICTIMS, PERPETRATORS OR ACTORS? GENDER, ARMED CONFLICT AND POLITICAL VIOLENCE 203 (Caroline O. N. Moser & Franca C. Clark eds., 2001).

13. Interview with Michael Hartmann, Local Prosecutor in Kosovo, in Washington, D.C. (Jan. 23, 2003).

14. Nicola Lacey, *Legislation against Sex Discrimination: Questions from a Feminist Perspective*, 14 J.L. Soc'y 411, 415 (1987).

provided "care-work," such as healthcare and childcare, duties typically performed by women.¹⁵ In conflict areas, women often have had to take on even more such care-work, for example in treating the sick and injured.¹⁶ States that combine an individual rights framework with structures supporting women's different needs tend to have a higher representation of women in public office.¹⁷

Moreover, the highly abstract and individualistic manner in which rights are defined and the process for advancing them in the legal system operate as deterrents to the raising of claims by women. When new laws affecting women are created in the peacebuilding stage, they often reflect the input of international specialists, with little attention to the suggestions of local women's groups. It is no wonder then that local women often see the laws that are supposed to "help them" as a foreign imposition with little relevance to their lives.¹⁸ To take one example, rights claims are often framed in terms of autonomy and the rights framework assumes that women desire to be seen as autonomous beings and to exercise their rights as such. However, in many societies "autonomy" is not what women want.¹⁹ Rather, many women seek instead "dignity" and "respect" for the relationships that matter to them. Accordingly, measures that support the ability of women as members of collectives to bring legal claims would be more in line with their needs. These measures, which would address breakdowns in social, family, and personal structures, are largely missing from the post-war reconstruction tool-box.

The rights-oriented approach also fails to address fully women's economic concerns. The answer to the questions "who benefits from war?" and "who has the best coping mechanisms in the post-war reconstruction period?" often depends on social class.²⁰ In

15. Eileen McDonagh, *Political Citizenship and Democratization: The Gender Paradox*, 96 AM. POL. SCI. REV. 535 (2002).

16. ELISABETH REHN & ELLEN JOHNSON SIRILEN, *WOMEN, WAR, AND PEACE: THE INDEPENDENT EXPERTS' ASSESSMENT ON THE IMPACT OF ARMED CONFLICT ON WOMEN AND WOMEN'S ROLE IN PEACE-BUILDING* (2002), available at <http://www.unifem.unidp.org/resources/assessment/index.html>.

17. McDonagh, *supra* note 15.

18. Third World women have long faced this problem. See Chandra T. Mohanty, *Introduction: Cartographies of Struggle, in THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM* 1, 4 (Chandra T. Mohanty et al. eds., 1991).

19. Judy El-Bushra, *Transforming Conflict: Some Thoughts on a Gendered Understanding of Conflict Processes, in STATES OF CONFLICT: GENDER, VIOLENCE AND RESISTANCE* 66 (Susie Jacobs et al. eds., 2000).

20. Meredith Turshen, *Women in the Aftermath of War and Armed Conflict: A Report of a Conference* (1999) (July 20-22, 1999) (conference in Johannesburg, South Africa, entitled: *The Aftermath: Women in Post War Reconstruction*), available at <http://www.bri.ca/partners/VAWWNET/africawar.htm>.

nearly all societies emerging from violent conflict, however, female-headed households and war-affected women in general are more likely to be faced with poverty.²¹ Studies have shown that violent conflict increases poverty, affecting women more severely than men,²² and that women are more likely than men to be rendered landless²³ and without access to clean water and suitable nutrition.²⁴ Researchers have described this phenomenon as "economic violence," that is, "the failure to recognize, value, and account for women's economic contributions escalates in wartime when the economy goes underground and rebel male soldiers 'live off the land,' which is to say that they survive by preying upon, stealing from and dispossessing women."²⁵ The rights-based approach in conflict areas focuses on the achievement of formal civil and political rights, to the neglect of economic, social and cultural rights. Although peacebuilding projects now routinely include some projects addressing women's waged labor, these projects are largely conceptualized as temporary and "special" benefits. Very seldom is freedom from poverty framed in terms of legally enforceable rights.²⁶

A related limitation of the rights-based approach to women's rights as traditionally applied is its inability to address the power imbalances and other structural factors that perpetuate the subordination of women.²⁷ Under this dominant view, Patricia Smith explains, "the solution to the oppression of women [is] providing equal opportunity for all."²⁸ Yet, seemingly gender-neutral reconstruction policies, such as structural adjustment policies advocating the privatization of land, water, and electricity can be especially devastating for women, who generally do not have the means to purchase land and are unable to afford market prices for electricity and water.²⁹

21. INTERNATIONAL CENTER FOR RESEARCH ON WOMEN, GENDER, CONFLICT AND REINTEGRATION, AN ANALYSIS OF HOUSEHOLD EVIDENCE FROM EL SALVADOR (1999), available at <http://www.icrw.org/docs/ribs/ElSalvadornew.pdf>.

22. MARSHALL, *supra* note 2, at 7; see also Turshen, *supra* note 20.

23. REHN & SIRILEAF, *supra* note 16, at 130.

24. CHARLOTTE LINDOY, WOMEN FACING WAR 76-79, 90 (2001).

25. Turshen, *supra* note 20. For more on women being forced to do domestic work for parties involved in armed conflict, see WOMEN, PEACE AND SECURITY, *supra* note 7, at 22.

26. WOMEN, PEACE AND SECURITY, *supra* note 7, at 33-38. Freedom from poverty is not included in the discussion of legally enforceable rights that may be violated by conflict.

27. MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 25 (1999).

28. Patricia Smith, *Feminist Jurisprudence and the Nature of Law*, in FEMINIST JURISPRUDENCE 3, 4 (Patricia Smith ed., 1993).

29. REHN & SIRILEAF, *supra* note 16, at 129.

These kinds of neutral practices that have the effect of deterring women's participation or overlooking their contribution to society are of little concern. To this end, international peacebuilders in places like Kosovo have focused on such projects directed at enhancing women's freedom from discrimination in the workplace and/or right to participate in government, while failing to challenge the particularly negative impact that the poor health care system has on women's lives.

The rights-based approach concentrates on promoting women within a political and economic system designed to advance male power, without challenging masculine constructions. As Hilary Charlesworth notes: "The promise of equality as 'sameness' to men only gives women access to a world already constituted by men and with the parameters determined by them."³⁰ A good illustration of this may be found in the way in which women in Kosovo have stepped into violent roles traditionally played by men. When the women of Krusha e Vogel blew up the homes of their Serbian neighbors and when women in Kosovo exercise their new right to sign up for the police force, they are not changing or challenging the relative power of men and women. Rather, as Lepa Mlajenovic and Meredith Turshen have observed, in these situations women are "instruments of the old order."³¹

A true challenge to the "old order" would involve alternative conceptions of security that move beyond "negative power" (i.e., protection from harm; conflict management through force) to a more "positive" conception of power that concentrates on developing individual and group capacities to work together for a more just society.³² Cynthia Cockburn points to Adam Curle's conception of "development" as one conceptualization of this sort of "positive" power: "[T]he restructuring of conflictual relationships from below to create a situation, a society, or a community in which individuals are enabled to develop and use to the full their capacities for

30. Hilary Charlesworth, *The Hidden Gender of International Law*, 16 *TEMP. INT'L & COMP. L.J.* 93, 93 (2002).

31. Turshen, *supra* note 20.

32. For example, Lee-Anne Broadhead argues: "The most important point to be made about the insecurity of peoples . . . is that the structure of power relations in the international system must be thoroughly examined." Lee-Anne Broadhead, *Re-packaging Notions of Security: A Skeptical Feminist Response to Recent Efforts*, in STATES OF CONFLICT: GENDER, VIOLENCE AND RESISTANCE, *supra* note 19, at 35. Liz Kelly argues that "any 'peace' involves a reworking of power relations, not just between nations or parts of nations but between men and women." Liz Kelly, *Wars Against Women: Sexual Violence, Sexual Politics, and the Militarised State*, in STATES OF CONFLICT: GENDER, VIOLENCE AND RESISTANCE, *supra* note 19, at 62.

creativity, service and enjoyment.³³ Women's access to productive resources and health care is as much a security issue as policing, but it is not framed in these terms and, consequently, is viewed as a lower priority in the peacebuilding process.

From this analysis, it is clear that the rights based approach to women's advancement has numerous shortfalls, particularly when applied to post-conflict reconstruction projects. In a conflict zone, analyzing the structural, social, and cultural forces hindering women's rights, and the particular way in which the conflict has affected women, is imperative for the long-term success of projects intending to advance women's rights.

II. SIGNIFICANT STRUCTURAL OBSTACLES MUST BE ADDRESSED IF WOMEN ARE TO ACHIEVE A LONG-TERM IMPROVEMENT IN THEIR STATUS

Recognizing the limits of a rights-based approach discussed above, United Nations ("U.N.") and nongovernmental organization ("NGO") programming have adopted a "gender perspective."³⁴ According to the U.N. Expert Group responsible for developing guidelines for integrating a gender perspective into U.N. human rights activities, the concept of gender perspective is based on an understanding that in all situations some perspective of interpreting reality is present. Historically, that perspective has been oriented toward the male view. Accordingly, most perspectives have not taken women's views into account, rendering everyday violations of women's rights invisible.³⁵

Beyond merely describing power differentials, the use of a gender lens as an analytical framework brings into view the different dimensions of power and gender inequality that are normally lost in international relations analysis.³⁶ By uncovering and challenging

33. Cynthia Cockburn, *The Gendered Dynamics of Armed Conflict and Political Violence, in VICTIMS, PERPETRATORS OR ACTORS? GENDER, ARMED CONFLICT AND POLITICAL VIOLENCE*, *supra* note 12, at 13, 23 (citing ADAM CURLE, MAKING PEACE 174 (1971)).

34. See, e.g., *Windhoek Declaration: The Namibia Plan of Action on "Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations"* (May 31, 2000), available at www.reliefweb.int/library/GHARKit/Doc-files/WindhoekDecl.doc.

35. *Report of the 1995 UN Expert Group Meeting on the Development of Guidelines for Integration of Gender Perspectives in UN Human Rights Activities and Programmes*, UNIFEM, U.N. Doc. E/CN.4/1996/105 (1996).

36. Cockburn, *supra* note 33, at 13, 15.

sites of power,³⁷ a gender analysis holds more potential than a traditional rights approach for "generat[ing] demands for change, for satisfaction of women's needs."³⁸

Many rights-oriented organizations, in fact, have attempted to adopt a gender analysis in analyzing women's status in a specific population.³⁹ Accordingly, in designing their projects, they take account of the skills, interests, and abilities that men and women have based on their gender roles.⁴⁰ The application of a gender perspective has been particularly influential in changing some responses to gender-based violence. Instead of understanding violence against women as a private, individual matter, many organizations now see that "violence against women cannot be seen in isolation from structural gender inequality"⁴¹ and, thus, attempt to address the problem at its core.⁴²

Ironically, the main obstacle to effective application of a gender perspective that interrogates power imbalances is the failure of the international agencies adopting such an approach in the field to apply it back home to their own organizations. A study of the reconstruction in Kosovo, conducted by Chris Corrin in 2000, aptly illustrates the continued failure of humanitarian organizations to address gender concerns fully and consistently and to integrate local and international women in decision-making positions in program formation, adoption and implementation.⁴³ Corrin found that the main problem is that processes of gender mainstreaming were not "two-way [i.e. happening within international and local structures] and

37. See JOHN W. SCOTT, *Gender: A Useful Category of Historical Analysis, in WOMEN'S STUDIES INTERNATIONAL: NAIROBI AND BEYOND* 13, 36 (Aruna Rao ed., 1991).

38. Cockburn, *supra* note 33, at 15.

39. See, e.g., Chusnul Mar'iyah, *The Silent Majority Speaks Out: Women's Coalitions in Indonesia, in WOMEN, VIOLENT CONFLICT, AND PEACEBUILDING: GLOBAL PERSPECTIVES* 49 (May 5-7, 1999) (on file with author). Mar'iyah speaks of the need to combine rights- and power-based approaches to create "the space for dialogue to sort out the problems through an interest-based approach." *Id.*

40. See JULIE MERTUS, *WAR'S OFFENSIVE ON WOMEN* (2000).

41. Heaven Crawley, *Engendering the State in Refugee Women's Claims for Asylum, in STATES OF CONFLICT: GENDER, VIOLENCE AND RESISTANCE*, *supra* note 19, at 100.

42. For example, the Netherlands Organization for International Development Cooperation ("NOVIB") has looked at "how violence against women can be taken forward as an issue in all our development, relief and human rights interventions," and advocates an "analysis of gender and power relations . . . [to] help us better understand the different types of violence." Irma van Duuren, *Supporting Women's Peacebuilding Efforts: NOVIB's Commitments, in WOMEN, VIOLENT CONFLICT, AND PEACEBUILDING: GLOBAL PERSPECTIVES*, *supra* note 39, at 62.

43. Corrin, *supra* note 5.

transparent.⁴⁴ While some organizations have examined their own management practices, most of the changes have been focused on overseas activities. And despite well-honed gender policy statements at headquarters and the pronounced desire for programmatic changes, overseas activities continue to approach gender unevenly and largely without the valuing of local expertise.

Some of the reasons for this failure are gender-related and others are endemic to the humanitarian field: (1) lack of agency coordination; (2) a paucity of information in relevant languages; and (3) a lack of transparency in funding.⁴⁵ The emergency nature of many relief operations—the “tyranny of the emergency”—also leads to the deprioritizing of gender issues as of lesser urgency.⁴⁶ Another problem that manifests itself especially with respect to gender issues is that humanitarian organizations, by design, resist top-down change. Many humanitarian organizations, particularly as a result of changes in recent years, tend to be decentralized, with projects driven more by strong personalities in the field than by headquarters’ mandates. Even when staff address gender issues, their organizations may not back them up with serious institutional commitments that outlast rapid personnel turnover in emergencies. Moreover, the donor-driven, results-oriented nature of humanitarian aid penalizes gender projects, as improvements with respect to gender do not lend themselves to the predominantly quantitative measurements demanded by large donors.

The ability of peacebuilders to address women’s concerns is exacerbated by the poor representation of women and men appropriately trained on and sensitized to gender issues. As Rachel Wareham, a long-time feminist activist in Kosovo, has observed, recruitment for field positions has focused on “skills,” without regard to a person’s understanding of gender issues or human rights.⁴⁷ The representation of women in decision-making positions in the U.N. and other international peacebuilding organizations continues to be extremely low. For example, women’s representation in the United Nations Mission in Kosovo (“UNMIK”) and the Organization for Security and Co-operation in Europe (“OSCE”) is poor: all the senior posts except one have been held by men.⁴⁸ And in 2000, only two of the twenty departments of the Joint Interim Administrative Structures

44. *Id.*

45. See MARTUS, *supra* note 40.

46. *Id.*

47. Email correspondence with Rachel Wareham, feminist activist in Kosovo (Oct. 2001).

48. Lesley Abdela, *Men with a Mission: No Women, GlobalS.A.S.*, Mar. 2, 2000, at 21.

(“JIAS”), the joint international/local governing body in Kosovo, were headed by women.⁴⁹

Adding women to international staff does not help if those in control of decision-making and resources do not listen to and value the expertise of local women. In a letter to the U.N. Security Council Delegation in Kosovo, the Kosova Women’s Network, an influential network of local women’s groups, observed that the establishment of a Gender Affairs office of the U.N. mission has only exacerbated the problem: “International permanent employees of this Office have consistently marginalized and excluded local women and women’s groups. Rather than act as a channel for our voices, its officers took power in the name of local women, and appropriated our experience and ideas for solutions which it then declared its own.”⁵⁰

Although local women’s groups are among the strongest organizations in Kosovo, the Kosova Women’s Network wrote that they were consistently excluded from all vital meetings on reconstruction and security issues.⁵¹ Other women have argued that UNMIK, in the interest of “cultural sensitivity,” listens to Kosovar men, who argue for the exclusion of Kosovar women, without listening to the women themselves: “[W]hat we see here are men, men, men from Europe and America and even Asia, listening to men, men, men from Kosovo.”⁵²

The U.N. Security Council, in Resolution 1325, specifically urges states to “increase representation of women in all decision-making levels in national, regional and international institutions for the prevention, management and resolution of conflict.”⁵³ Yet, in Kosovo, women’s rights activist Igballa Rugova contended, “[i]t was classic, ‘do what I say, not what I do.’ In reports and in speeches the U.N. and OSCE promote the role of local women in decision making regarding conflict and security issues. However, our experience has been one of continual marginalization.”⁵⁴

49. Corrin, *supra* note 5.

50. Memorandum from the Kosova Women’s Network to the U.N. Security Council Delegation in Kosovo (June 17, 2001) (on file with author).

51. In an interview in August 2001, the effective head of the UNMIK Office of Gender Affairs, Roma Bhattacharjee, acknowledged that local women’s groups felt excluded, but contended that more was being done to address their concerns. Interview with Roma Bhattacharjee, effective head of UNMIK Office of Gender Affairs, in Pristina, Kosovo (Aug. 2001).

52. REIM & SIRLEAN, *supra* note 16, at 125.

53. S.C. Res. 1325, U.N. SCOR, 55th Sess., 4213th mtg., U.N. Doc. S/RES/1325 (2000), reprinted in 40 I.L.M. 500 (2001).

54. Interview with Igballa Rugova, Kosovar women’s rights activist, in Pristina,

Instead of including women on an equal basis with men in the peacebuilding project, the international community has ghettoized Kosovar women into "women's projects," spanning from women's microcredit enterprise, post-agreement trauma counseling, women's health care projects, to political leadership training for women.⁵⁵ An audit of these projects conducted by Wareham and Diane Quick of the Women's Commission for Refugee Women and Children, found them severely under-funded and often misdirected.⁵⁶ For example, women and girls have almost exclusively been offered gender-stereotyped training such as hair-dressing and sewing, rather than training in wider skills proposed by themselves or by local women's NGOs, such as women's publishing presses or architecture firms.⁵⁷ Particularly in areas where a large proportion of men have been injured or killed, it is important for women to be trained in skills that have traditionally been performed by men. Moreover, the ghettoization of women's projects and their focus on gender-stereotyped training contradicts any equal rights rhetoric by showing women that their choices remain limited.

Thus, while the application of a gender perspective overcomes some of the shortcomings of a rights-based approach, it points to the many shortcomings in the approaches of the organizations and projects themselves. A gender perspective must therefore be applied not only to the conflict itself to uncover its gendered impacts, but must also be applied to the international organizations taking part in the peacebuilding process.

III. CONCLUSION

Violent conflict is, by definition, harmful and it is distasteful and inaccurate to think in terms of women winning or losing from war. Even if we could think in such terms, not all women are similarly situated, and, in particular, great variations exist according to class and the degree to which the international community has agreed to donate resources to reconstruction. Nonetheless, some

Kosovo (Aug. 2001).

55. See, e.g., Terms of Reference: Office of Gender Affairs, United Nations Interim Administration in Kosovo (Nov. 3, 2000) (on file with author); STAR Network website, <http://www.worldlearning.org/star/>.

56. Rachel Wareham & Diane Quick, *Problems or Partners? Working with Women to Rebuild the Balkans*, FORCED MIGRATION REV., Oct. 2001, at 16, available at <http://www.futureview.org/FMRpdfs/FMR11/fmr11full.pdf>.

57. *Id.*

general observations can be noted. While women may gain new skills and challenge traditional gender roles during wartime, any gains in status are likely to be short-lived. In peacetime, women are likely to experience a backlash as men return from battle and exile and demand their old positions of power. Women and girls who fought side-by-side with men, or who earned the family income while the men were fighting, may be required to stay at home and "replenish the nation" through childbearing.⁵⁸ Frustrated from fighting, returning men often take out their anger on women and, as a result, incidents of domestic violence rise during peacetime, and the inability and unwillingness to investigate and prosecute perpetrators of violence against women continues unabated. At the same time, it would be wrong to cast women as mere victims. In some way, women find means to resist, to exercise agency, and to organize and push for more equitable and just societies.

A rights-based approach has been the main tactic adopted by international organizations interested in helping women in post-war societies to preserve any gains in skills and status they have achieved in wartime and to better prospects for the future in peacetime. This piece has suggested the limitations of such a rights-oriented approach as traditionally conceived and applied. While a rights-based approach should still be utilized, its inherent limitations should be recognized and international organizations should combine the rights framework with a gender analysis that can get to the core of power imbalances. Most crucially, international organizations should apply a gender analysis to themselves and include with greater respect the expertise of local women in program design and operation.

58. *Id.* *supra* note 2, at 15-16.