

# **Women and Children in Conflict Situations: The Culture of Rights as a Missing Link in Africa**

**By Makumi Mwagiru**

## **Abstract**

Conflict in all its forms is endemic all over the world. Violent conflict is prevalent in Africa. Violent conflict exists within a triangle of relationships. This involves the belligerents and the citizens of whatever location the conflict is taking place. In many analyses of conflicts however, the citizens part of this triangle is often ignored. In particular, even within the 'citizens' corner of the triangle, the most vulnerable groups are rarely considered. The most vulnerable groups within any conflict situations are women and children. In normal situations, children and women in society require special care and protection. If this is accepted to be true in situations outside conflict, it is even more so in conflict situations. This article explores the basis on which the situation of women and children in conflict situations should be analysed. It outlines the broad canvass within which conflicts affect women and children, and examines the rights platform on which the welfare of women and children in conflict situations is based. It outlines the legal basis for the protection of women and

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children, and outlines the law on women and children in conflict situations. The article offers an analysis of 'rights', especially as they are perceived in the African context. It points out the ways in which the rights of women and children are eroded, especially in contexts of conflict. Ultimately, the article suggests a way out of the current situation, and outlines a programme for future action.

# **Les femmes et les Enfants des Régions en Conflit: Vilation des Droits de l'Homme en Afrique**

**Par Makumi Mwagiru**

## **Résumé:**

Il y a des conflits un peu partout dans le monde, notamment en Afrique, où ceux-ci s'avèrent très violents. Ces conflits s'engendrent, normalement, dans une situation de rapports triangulaires. Les belligérants et les citoyens de la zone de conflit se trouvent inévitablement impliqués. Cependant, dans bon nombre de cas, l'étude des problèmes qui se posent dans ces régions ne se donne guère à l'analyse des problèmes propres aux réalités locales et quotidiennes. Ainsi les femmes et les enfants, qui constituent les groupes les plus vulnérables, reçoivent peu d'attention. Or ceux-ci méritent une protection particulière, même dans les régions de non conflit. Mwagiru s'efforce de démontrer la nécessité d'une analyse approfondie, de la situation des femmes et des enfants, des zones de conflits. Cet auteur

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va jusqu'à décrire le contexte judiciaire propre à ces zones. Selon cette communication, il ne faudrait jamais aborder cette analyse hors de ce contexte africain, qui confère aux Droits de l'Homme une perspective particulière. Mwagiru montre, par exemple, que dans les zones de conflit ces droits sont à peine respectés. L'auteur donne des suggestion qu'il estime pourraient apporter une solution durable, à ces conflits perpétuels et leurs effets.



## **Situations of Conflict Affecting Women and Children**

This article is concerned primarily with the sharp end of conflict (violent conflict), rather than with structural forms of conflict. It is accepted nevertheless that situations of structural conflict lead directly to violent conflict. This connection is important thematically. In situations of structural conflict, women and children are an important part of the victims of the structural violence that ensues. Where there exists violent conflict, women and children are still the most immediate victims of that type of conflict. This is the case whether the conflicts in contemplation are internal or international conflicts. In any event it is now generally accepted that there are no truly internal conflicts. The process of internationalisation renders what at first might appear as purely internal conflicts international.

Women and children become victims of conflicts in various ways. In the most direct ways they are victims in the sense of being either killed or maimed in conflicts. Where this is not the case, they become the agents of the internationalisation of conflict, when they must cross international borders as refugees to escape from conflict situations at home. In other cases, they do not cross international borders, but are nevertheless internally displaced as a result of conflicts. Both these situations give rise to environmental conflicts, which further affect women and children adversely. Although it is true that all these situations affect men as well, it is women and children who bear the worst hardships in these situations. They are the most vulnerable, and therefore the most affected.

## **Human Rights and Conflict Situations**

All conflicts must be conceptualised within the context of human rights. Conflicts result in a general violation of the human rights

of its victims. All categories of human rights are affected and violated by conflict. Conflict violates the fundamental rights of people because it leads to the loss of human life, it curtails the liberty of individuals, and the structures for vindicating these fundamental rights do not operate in conflict situations. Similarly, conflict makes it impossible for people to enjoy other categories of rights. The ability of people to pursue and enjoy their economic rights is eroded by conflict. The social rights of citizens to health care, education and proper nutrition are heavily eroded in conflict situations. Equally, conflicts lead to the break down of social structures, and this makes it difficult for victims of conflict to enjoy cultural and social rights. Conflict situations further lead to the breakdown of all patterns of interaction and care within and between communities. Hence, the traditional rights of brotherhood and solidarity are disrupted.

In the African context, these developments hit especially hard at women and children. In this context, even in the absence of violent conflict, women and children are the victims of structural violence. This violence exists because traditional structures are heavily weighed against the exercise of many rights by women and children. If this is 'normal' in normal circumstances, then it is exacerbated even more in situations of violent conflict.

Women's and children's rights intersect at many important points. The Universal Declaration of Human Rights (1948) makes the most explicit connection between women's and children's rights by providing that "Motherhood and childhood are entitled to special care and assistance." However, it is also true that the world view represented by international legal instruments and that of particular societies in Africa sometimes clash, thus making implementation of international law on women and children difficult to effect in some African states.

Some of the points of intersection between women's and children's rights are 'negative', in the sense that they involve structural discrimination against both women and children.



This is especially so with respect to girl-children, particularly where they are also victims of conflict. Such children are, for example subjected to harsh structural conditions (early marriage, lack of equal schooling opportunities, and eventually being forced to engage in activities like prostitution). This affects negatively the rights of such children (and women) to survival and development.

Apart from this, children have certain rights before, during, and after birth. In all these instances, the rights of the mother cannot be separated from those of the child. In this sense, the rights of women are part and parcel of the rights of children: they are fundamentally symbiotic. At a cultural level, the fate of children and women, and indeed their very rights, is often intertwined. At a more fundamental level, the survival of children is linked to that of women, particularly mothers. This symbiotic relationship is most graphically underlined with respect to important aspects such as health, nutrition, poverty and food security. Hence women's and children's rights are interconnected at important levels: in terms of survival, development, and protection of those rights.

## **International Law on the Status of Women and Children**

This section is concerned with the international law relating to the status of women and children. The international legal basis is the most apt because it lays down the ideals and goals that states parties should endeavour to realise with respect to women and children. Any municipal legislation that is passed should reflect the requirements of international law in this area. The methods and problems of applying international law in the domestic sphere is not the concern of this paper. Whether international law is applied directly, or needs first to be transformed into municipal law, the end result should always be the

application of international law domestically.<sup>2</sup>

The two international treaties that address directly the rights of women and children are the 1979 United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the 1989 United Nations Convention on the Rights of the Child (CRC). The CEDAW provides a Bill of Rights for women, and seeks to protect and promote the rights and welfare of women everywhere. The CRC on the other hand enumerates the rights owed to children everywhere. Regionally, the 1990 African Charter on the Rights and Welfare of the Child addresses specifically the condition of children in Africa, and seeks to make the CRC culturally specific to the rights and welfare of the child in the African situation.

These treaties form a specific part of the wider body of international human rights law. Women and children are also entitled to the general human rights specified in other treaties. The CRC and CEDAW are thus essentially a specialised branch of the trilogy forming the international Bill of Rights: the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social, and Cultural Rights (1966).

The CEDAW and CRC bring women and children under the umbrella of fundamental human rights. *They emphasise that while general human rights treaties apply equally to women and children, their status and situation entitles them to specific protections.* This is especially important for women and children in Africa, where culture and tradition often hamper the ability of women and children to enjoy their general human rights. The further rationale of the specific provisions for women and children provided in the CEDAW and CRC is that without the specific protection of women's and children's rights, the whole fabric of society would suffer. This in turn would affect negatively cohesion at the national, community, family, and even household level. In turn this would militate against the survival and development of women and children.



## **International Law on Women and Children in Conflict Situations**

Conflict situations provide the location and theatre in which the rights of women and children are most grossly violated. Conflict situations also directly truncate the rights of survival and development of women and children. In these situations, governments also find it difficult to protect the rights of women and children. The legal framework within which women and children in these situations fall therefore needs elaboration.

Women and children in conflict situations can be classified into four main categories: those in actual conflict situations; those displaced from external conflicts (i.e. refugees); those displaced from internal conflicts (i.e. internally displaced persons), and those affected by environmental conflicts.

Women and children displaced from external conflicts are refugees<sup>3</sup> and their rights in international law are provided for by two specific treaties. These are the United Nations Convention Relating to the Status of Refugees (1951), and the Protocol Relating to the Status of Refugees (1967); and in a regional context the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969). The 1951 Convention originally was limited in scope to refugees whose status arose before 1 January 1951. But the 1967 Protocol extended the scope of international refugee law by removing that date line.

The OAU Convention addresses the peculiar circumstances of Africa, and defines a refugee in much broader terms than does the 1951 Convention<sup>4</sup>. Whereas the 1951 Convention defined a refugee as any person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is unable or unwilling to avail himself of the protection of his country, or is unable or unwilling to return to it<sup>5</sup>. The OAU Convention goes beyond this and defines a refugee also as any person who leaves

their country of origin or nationality due to external aggression, occupation, foreign domination or events seriously disturbing public order in part or in whole in the country of origin or nationality.<sup>6</sup>

Apart from the specific protections of these refugee Conventions, other international human rights instruments apply also to refugees.<sup>7</sup> These include the Universal Declaration of Human Rights (1948)<sup>8</sup> the International Covenant on Civil and Political Rights (1966),<sup>9</sup> the Convention Against Torture and Other Cruel, Inhuman or regarding Treatment or Punishment (1984),<sup>10</sup> and in a regional context, the African charter on Human and Peoples' Rights (1981).<sup>11</sup>

Despite these international protections, the rights of refugees, especially women and children, are often violated. This violation amounts to a denial of their fundamental human rights. Many of these violations in this respect are done by asylum states themselves, either because of deliberate policy, discrimination of refugees (who are considered to be 'foreigners'), or from ignorance. Whatever the reasons, the suffering that refugee women (and especially children) go through has severe psychological and other effects. In either case, this means that they are not able to enjoy fully the rights (for example of survival and development) that are enshrined in the CEDAW and CRC.

In terms of international conflict, women and children are covered by the 1949 Geneva Conventions, and particularly the fourth Geneva Convention Relative to the Protection of Civilians in Time of War. The problem arises however, when the conflict in question is not an international conflict. And yet, internal conflicts have been responsible for massive displacement of civilian populations including women and children. Internally displaced persons end up living in refugee-like situations. Their plight is even worse than that of refugees, because the UNHCR does not, for example, become involved in their welfare, since they are not, *strictu sensu*, refugees.

In the Kenyan context, the peculiar problems of women and



children who are internally displaced stems from two factors. The first is that the government often refuses to acknowledge that there exist situations of internal conflict. This means that children and women caught up in such situations are not treated as people who require special care. The second problem, which is related to this, is that the government has consistently declined to become a party to the Second 1977 Protocol Additional to the Geneva Conventions of 1949.<sup>12</sup> The Second 1977 Protocol Additional to the Geneva Convention of 1949 applies the rules of international armed conflict to victims of non-international armed conflict.<sup>13</sup> The failure of the government to become a party to this Protocol means that victims of internal conflict do not enjoy the protections of international humanitarian law. Displaced persons, who are victims of internal conflicts, fall into this category. Hence, internally displaced women and children in this context suffer a 'double jeopardy': the inability to enjoy the human rights specified in general human rights treaties, and those specified in specific treaties addressing their welfare, such as the CEDAW and CRC; and the inability to enjoy the protections specified in humanitarian treaties, especially the Second 1977 Additional Protocol.

## **Conflict and the Culture of Rights in Africa**

The process of the growth of international human rights law has in essence been a process of the individualisation of human rights, and reducing the role of governments in determining their enjoyment. Indeed, the emergence of universal human rights is essentially the emergence of rights which are universally owed to individuals, wherever they are. The early growth of human rights saw them specifically as a category of rights which, while individuals could enjoy them, states and governments could encroach on them, and not be answerable, on the basis of sovereignty. This approach stunted the growth of an interna-



tional conception of human rights.

The Second World War witnessed perhaps what were the grossest violations of human rights ever witnessed until then. This led to two important developments with respect to human rights. First, there was a flowering of international treaties on human rights. This internationalisation of human rights<sup>14</sup> brought with it the specifying of protection in 'specialised' areas of human rights. The Universal Declaration of Human Rights, the Genocide Convention, and the Refugees Convention belonged to this genre, as did the later 1966 Covenant on Civil and Political Rights.

As African states attained independence, this is the international legal rights regime that they found in place. There was soon to be a clash of perspectives between the philosophies these new states espoused, and the international doctrines on human rights. For African (and other, especially third world) states, formally joining these regimes was an act of sovereignty, intended to establish their presence in the community of states. Ratifying human rights and other treaties was a way in which their rite *de passage* from colonial to independent states could be underlined. Although the treaties they signed required respect for individual rights, African states argued especially, that some of these individual rights conceptions offended the African setting, and African values. Sovereignty for them meant complete independence of action within their territorial borders. Not surprisingly, the most prominent and most jealously guarded doctrine in their international relations was that of non-interference in the internal affairs of states.<sup>15</sup>

Throughout Africa, internal conflict raged, as citizens tried to change the political map they were dealt at independence. Governments, on the other hand, were intent on holding onto power, by whatever means available. Internationally, conceptions about human rights were developing apace. There was a gradual shift in thinking from the international perspective, to a more universal one. In this shift, human rights came more and

more to be seen in their universal, rather than territorial or international context Individual rights, particularly fundamental rights, came to be seen within this context. The universalisation of human rights was accompanied by two important developments. There was a doctrinal metamorphosis in international law, such that now human rights treaties (particularly those on individual rights) came to be considered to be binding on states, whether or not they had ratified them. There was also an important paradigm shift in the international law relating to intervention. Whereas before intervention was carefully circumscribed by law, humanitarian intervention came more and more to be accepted. The content of humanitarian intervention is that it takes place wherever there are gross violations of human rights.<sup>16</sup> In such cases, third parties may intervene in order to stem the abuse of human rights. This was in keeping with the universalist conception of human rights: that their violation is a common concern of all members of the international system. Contemporary interventions in Somalia, Rwanda, Burundi, Bosnia and elsewhere are founded on this prescription.

## **African Responses to the Individualisation of Human Rights**

Africa has resisted this progress of human rights all the way. At first, this resistance was based on the argument that it would not be possible to enjoy civil and political rights if the individual did not already enjoy other rights, especially economic and social rights. This was an argument which African states pushed hard in their multilateral diplomacy, especially at the United Nations. There was a certain logical coherence in this argument. However, given the situation of individuals in African states whose rights were completely wiped out by internal and other conflicts, this argument began increasingly to ring hollow. Whereas the argument about the need for other rights to be enshrined was



sensible, and indeed contributed to the development of international human rights, it did not address the problem of the gross and constant violation of the human rights of individuals within African states.

The stronger response was more philosophical. It was based on the argument that Africans did not first hear of human rights from the west, and that since time immemorial, Africans had their own conceptions of human rights. This was a compelling argument, especially in the context of the confrontational climate of the Cold War<sup>17</sup>, and the African's recent emergence from colonialism.

The argument based on cultural relativism essentially took the view that there were within African cultures a respect for human rights, and a recognition of various classes of human rights, which apply to different situations and circumstances. Especially the argument was made further that within African culture, rights were essentially communal, and enjoyed within society as a whole. This notion of seeing human rights within their social, communal and family context had a certain attraction. But it was an argument based on an ideal society, and given the endemic conflicts in Africa, the situation on the ground was far from ideal.

The cultural relativist argument has various weaknesses. It assumes that traditional and cultural rights are superior to any other rights. But it fails to recognise that most of the traditional values it championed have been eroded by developments in the structure of economies, politics, and others. Hence the argument that cultural patterns and rights would be diluted by introducing 'western' conceptions of human rights, does not hold water.

In terms of the specific rights of women and children (particularly in conflict situations), the cultural arguments mitigate the application of international instruments such as the CEDAW and CRC, which are intended to promote the rights and welfare of women and children. Cultural practices and attitudes also



make it difficult to realise the content of rights specified in various instruments. And yet, these rights are fundamental rights, and this means that they transcend any boundaries imposed by culture, or even territorial borders. The cultural relativist argument is also superficial. Recognising that children and women, in all situations have rights, does not entail the dilution of any cultural rights that might exist. If women's and children's rights are human rights, and if it is agreed that those rights, being fundamental, apply across cultures, then the cultural relativist position does not hold water.

Governments find the relativist arguments easier to make. By pleading cultural relativism, they hope thereby to escape from the burdens of implementing international human rights treaties, including those specifically addressing the rights of children and women. But realities on the ground demonstrate the hollowness of these arguments. In conflict situations, the rights of women and children are grossly violated. This is true in actual conflict situations, and in those situations that are the result of conflict, like refugee situations, and those of internally displaced persons.

## **Objections to the Language of 'Rights'**

Within discourses on the rights of women and children in any situations, there has arisen a problem with the language of 'rights'. This problem is closely related to that of cultural relativism. The argument against the language of 'rights' is that (especially) African governments hate the language of rights because rights connote a duty which they feel they are compelled to observe. It is therefore sometimes suggested that the whole discourse about women's and children's rights should be couched in different language. The argument behind this sort of suggestion is that all efforts should be made so as not to alienate the very states which are meant to implement instruments and

programmes on women's and children's rights.

This whole approach is founded on a serious misconception. The thinking behind it is that women's and children's rights can be something else, apart from rights, strictly stated. This underscores the fact that, especially in Africa, the idea of women's and children's rights as fundamental rights has not gained the currency that it should have. That approach also seems to be based on the view that women's and children's rights are optional rights, which states may implement when they wish to. In other words, women's and children's rights in this perception, are seen as aspirational, or programmatic rights<sup>18</sup> to be implemented when resources permit.

Clearly, if states take the view that women's and children's rights belong to a lesser category of rights, then they may resist the whole idea of 'rights' which puts women's and children's rights firmly within the category of fundamental rights. States, especially in Africa, prefer to design and implement programmes on women and children as they like, or as political expediency dictates. They are therefore often hostile to the pressure of law, and the duties it imposes on them to respect, and protect women's and children's rights. It is not surprising that they take this view: it is the easier way out. However, given the importance of women's and children's rights within society (African and all others), the argument against the language of rights must be rejected. This is the basis of the argument adopted in this paper, that women's and children's rights are not just human rights, but fundamental human rights, and that their protection and promotion should not depend on the whims of governments.

This argument is especially valid in the case of the rights of women and children in conflict situations. Research carried out in conflict situations in Kenya shows that the human rights of women and children are rarely protected. In those cases even the cultural structures that presumably supported the rights of women and children exist, because the conflicts broke them down. Following internal conflict (the infamous land clashes) in



Kenya in 1991-3, at least three hundred thousand people became dislocated, and seventy per cent of these were children. The stories that have emanated from the camps they were bundled into leave no doubt at all that they were living in conditions of gross deprivation. In such conditions all their human rights appear to have been suspended. In such circumstances, governments ought not to have a choice about what to do in order to recognise and protect the human rights of such people. They do have certain rights, and these rights are fundamental human rights. This is the only construction that is consistent with the rights and dignity of such citizens.

**Impact of Conflict Situations on Women's and Children's Rights** Conflict situations affect women's and children's rights very adversely. Conflict leads to the erosion and disintegration of all social and economic bases that traditionally support the enjoyment by women and children of their human rights. In conflict situations, the individual woman's and child's bonds with society are delinked. Conflict situations also lead to the break down of all forms of social cohesion. Women, for example, are denied the support systems that otherwise exist. They often end up being the providers for their families. That they are forced to head single parent households, and given the conditions of deprivation that conflict brings, strains even the slim family bonds that survive. Children are especially hard hit. Apart from being unable to enjoy any of the traditional human rights, their education is interrupted, and often curtailed for good. Some children are also forced to be the breadwinners, and in this pursuit, end up engaging in activities such as prostitution (for girls), and drugs, for both boys and girls, but especially boys. Since there are no structures for social control, the whole structures on which rights could be embedded are destroyed. The effect of conflict for women is that they become economically disabled, socially disengaged, politically disenfranchised, and psychologically traumatised. In addition, the children affected by conflict situations are forced by circumstances to live



outside childhood'.<sup>19</sup>

Conflict affects women and children in other ways. The fact of dislocation is humiliating and dehumanising. The conditions of that dislocation engender many different types of problems, including economic, psychological, and social. In almost all cases, women and children living in these conditions suffer from the lack of appreciation of their special requirements and circumstances. In all conflict situations, and in situations arising from conflict, women and children live in very poor conditions, where security is not guaranteed. Thus they become victims of crime, including crimes such as rape, and other sexual assaults.

Quite clearly, there is an urgent need for women and children living in such conditions and circumstances to be protected. Such protection should be forthcoming on the basis that they have certain fundamental rights, to which they are entitled at all times. Such protection would help to promote the development and indeed survival of women and children in these circumstances. This can only happen, however, once it is recognised that women and children in all circumstances, have individual rights. These are rights personal to them as individual human beings. Their existence does not depend on social, cultural or other structures in the community. Within individual human rights are encapsulated all the generations of human rights, which give life and meaning to the total human being.

## **Recognising Women's and Children's Rights: Some Proposals**

Although the concern of this article is with women and children in conflict situations, it is evident that the culture of respecting and protecting these rights must be developed long before women and children become victims of conflict. There is a link between the treatment of women and children in conflict and in

peace situations. During normal times, the rights of children and women are not realised fully, and often not at all. The structures of many societies make it impossible for women and children to realise their rights, and to have them protected. This condition becomes much worse in conflict situations.

The first step in protecting the rights of women and children is to develop a culture of rights within societies. This is especially necessary in Africa, where there has not developed a strong culture of rights. This can be done through programmes that aim at inculcating such a culture from the grassroots of societies. Governmental and other agencies should include programmes aimed at developing a culture of rights within their plans.

In order to cultivate such a culture, the very approach to promoting women's and children's rights needs a shift in emphasis. Thus, these rights should be seen not just as rights belonging to women and children as members of families and communities, but also as individuals. This approach of perceiving women's and children's rights in the wider context as being based on individual dignity and human rights, is consistent with the spirit of the CEDAW and CRC.<sup>20</sup>

But the even better approach, alongside this, is to build structures in society where conflict, whenever it arises, is managed in such a way that it does not become dysfunctional, and hence lead to the erosion of the rights of women, children, and others. The notion that managing conflict effectively can help in the promotion of women's and children's rights, harkens back to the contemporary debates about good governance, and respect for the rule of law. If democratic structures are in place and observed in any society a lot of the causes of conflict will be removed. Where the human rights of citizens are respected and observed, disagreements and conflicts in society will be managed peacefully.

African states are currently rife with all sorts of conflict. These conflicts arise in the main from the way in which those states are managed, and in disagreements about how power should be



held, and the conditions in which citizens will submit to governance. There is a persuasive school of thought which argues that the best way to remove the effects of conflict, such as refugees and internally displaced persons, is to address the causes of the conflicts themselves. This is, for example, the emerging philosophy of organisations such as the UNHCR.<sup>21</sup> In this approach, preventive diplomacy is the new emphasis. This includes activities "such as monitoring and early warning, diplomatic intervention, economic and social development, conflict resolution, institution building, the protection of human minority rights....."<sup>22</sup>

In the meantime, the reality of conflict cannot be ignored. Some short term measures can therefore be effected, which would help in protecting the rights of women and children in conflict situations. Most important amongst these is the ratification of the Second Protocol Additional to the Geneva Conventions of 1949. That Protocol requires that the rules of international armed conflict be applied to non-international conflict. Ratifying that Protocol is a short term measure, but it would at least help to ameliorate the rights situation of women and children in conflict situations. Non-governmental organisations can do much to bring pressure to bear on governments to ratify this important instrument. Many governments in Africa do not wish to do so, since many face situations of internal conflict. But that is precisely why ratifying this document is of the essence.

Whatever measures are adopted, whether in the short or long term, it is important that both governmental and non-governmental organisations cooperate in the protection of the rights of women and children in conflict and other situations. This is a partnership which has often been ignored, and when it exists, it has been to address the consequences of conflict, rather than its causes. A new partnership should be less reactive, and more proactive.



# Conclusions

This article has examined the condition of women and children in conflict situations. It has argued that the human rights situation of women and children in times of peace in Africa is very poor. This comes later to be reflected in their human rights situations during periods of conflict, and in its aftermath. While there exist many international legal instruments protecting the rights of women and children, these can only be effective where a culture of respecting rights already exists. Redressing this problem requires a multifaceted approach. It requires not just legal responses, but responses that address causes of conflict within particular societies. As the causes are addressed and removed, so too will a culture of respecting human rights generally, and those of women and children in particular, develop. This is a big challenge, in meeting which all must be partners in the common endeavour.

## Notes

- 1 Article 25 ( 2 ), *Universal Declaration of Human Rights*.
- 2 Kenya has for example ratified both the **CEDAW** and **CRC**, but has not yet put in place structures to make them directly applicable to Kenya. This reflects confusion in Kenya's treaty practice. Some treaties seem to apply directly, while others are required to be transformed into Kenyan law.
- 3 On the specific issue of women and children refugees, see for example: M. Forbes, *Refugee Women* (London: Zed Books, 1991); A.B. Johnson, *The International Protection of Women Refugees: A Summary of Principle Problems and Issues*

*International Journal of Refugee Law*, Vol. 1(2) (1989), pp.221-232; E.M. Ressler, N. Boothby & D.J.Steinbock, *Unaccompanied Children: Care and protection in Wars, Natural Disasters, and Refugee Movements* (New York & Oxford: Oxford University Press, 1988).

- 4 See E. Arboleda, 'Refugee Definition in Africa and Latin America: The Lessons of Pragmatism' *International Journal of Refugee Law*, Vol.3(2) (1991), pp.185-207.
- 5 Article 1, *UN Convention Relating to the Status of Refugees* (1951) .
- 6 Article 1, *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* (1969)
- 7 See G.J.L.Coles *et al*, 'Human Rights and Refugee Law' *Bulletin of Human Rights*, 1.: 63-123.
- 8 Article 9 (against arbitrary arrest and detention); article 13 (freedom of movement and residence, and freedom to leave and return); article 14 (right to seek and enjoy asylum from persecution); and article 15 (right to a nationality and from being arbitrarily denied of nationality).
- 9 Articles 2, 12 and 13.
- 10 Especially article 3, which extends the principle of *non refoulement* and non-extradition of persons who there is substantial grounds for believing would be subjected to torture.
- 11 Article 12 gives an individual, when persecuted, the right to seek and obtain asylum in other countries, in accordance with their laws and international conventions.



- 12 Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non International Armed Conflicts.
- 13 For a detailed commentary of the 1977 Additional Protocols, see Y.Sandoz, C.Swinarski, & B.Zimmermann, *Commentary on the additional Protocols of June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: ICRC & Martinus Nijhoff, 1987).
- 14 On the internationalisation of human rights, see D.P.Forsythe, *The Internationalisation of Human Rights* (Lexington, MA.: Lexington Books, 1991).
- 15 See article 3(2) of the OAU Charter,;and a commentary thereon in M. Mwagiru, 'Who Will Bell the Cat? Article 3(2) of the OAU Charter and the Crisis of OAU Conflict Management' *Kent Papers in Politics and International Relations*, Series 4, No.7 (1995).
- 16 See A.C.Arend & R.J.Beck, *International Law and the Use of Force: Beyond the UN Charter Paradigm* (London & New York: Routledge, 1993) Ch.8.
- 17 See P.Alston, 'The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights' in P.Alston (ed) *The Best Interests of the Child: Reconciling Culture and Human Rights* (Oxford: Clarendon Press, 1994) pp.1-25, 6.
- 18 The genealogy of this kind of thinking is based on the perception that human rights developed along three generations of human rights. The three generations approach is a useful one for analysis, even though some writers see it within a Cold War political and ideological setting: see for example, J.Donnely, *Post-Cold War Reflections on the*

Study of International Human Rights' *Ethics and International Affairs*, Vol.8 (1994) pp.97-117.

- 19 See J. Ennew, 'Outside Childhood: Street Children's Rights' in B. Franklin (ed) *The Handbook of Children's Rights: Comparative Policy and Practice* (London: Routledge, 1995) pp.201-214.
- 20 This argument has been made more articulately by K. Kibwana, 'Family Rights in Kenya: A Preliminary Examination of the Legal Framework' in R. Palriwala & C. Risseuw (eds) *Shifting Circles of Support: Contextualising Gender and Kinship in South Asia and Sub-Saharan Africa* (New Delhi: Sage Publications, 1996) pp.249-269.
- 21 See UNHCR, *The State of the World's Refugees: In Search of Solutions* (New York: Oxford University Press, 1995).
- 22 Ibid, P.43.