

**UN Security Council Resolution 1325 in Kenya:
Dilemmas and Opportunities**

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Working Papers in British-Irish Studies

No. # 2013

Institute for British-Irish Studies

University College Dublin

IBIS working papers
No. #, 2013

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ISSN #

ABSTRACT

The 2007/8 post election violence renewed interest in adoption and implementation of a national action plan due to the impact of the violence. The process of developing the Kenya National Action Plan (KNAP) for Security Council Resolution 1325 and 1820 on women, peace and security started in 2009 through a consultative process between an inter-ministerial secretariat in partnership with civil society groups. This working paper explores the current integration and positioning dilemmas the KNAP faces which may impact on its effectiveness while assessing the opportunities and challenges presented by current transitional justice initiatives such as the ICC and appointments of gender champions in potential ministries that could house the KNAP.

BIOGRAPHICAL INFORMATION

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Introduction

The 2007/8 post election violence (PEV) experiences in Kenya renewed interest in the adoption and implementation of Security Council resolutions 1325 and 1820. Before the 2007/8 post election violence the process of adoption was slow. In June 2009, the process of developing the Kenya National Action Plan (KNAP) started under the leadership of the National Gender and Equality Commission under an inclusive and participatory process between the government and civil society.

The Kenya National Action Plan (KNAP) is premised on four pillars: prevention, protection, participation, relief and recovery. The KNAP is unique compared to other NAPs because it is premised on a human security framework in an attempt to address the root causes of the economic and social-political issues around peace and security facing Kenyan women. Additionally, the proposed KNAP promises to deepen understanding of the multiple roles and concerns that women have in peace processes while mainstreaming them by creating accountability from different actors responsible for its implementation through resource allocation and policy development.

This working paper explores the dilemmas and challenges that have so far shaped the development of the KNAP process by employing critical analysis and lessons learnt from other case studies. It also explores possible opportunities and challenges presented by the new regime in implementing the KNAP. The paper will proceed as follows. The next section sets the contextual background of the Kenyan post election violence (PEV) which increased the urgency to adopt and implement Security Council Resolution (SCR) 1325. The background section then leads to further discussion on specific ways of how Kenyan women participated in the violence and the peace process. The analytical framework in this paper is drawn from conceptual and practical dilemmas and challenges that have presented themselves in other contexts where SCR 1325 is being mainstreamed through the development of National Action Plans (NAPs). This analytical frame will then be used to assess the current dilemmas that Kenya faces when developing its National Action Plan while discussing probabilities of other challenges that may arise in the process of developing the NAP which need to be considered before a conclusion is made.

The next section sets the background context of the SCR 1325 in Kenya. This background traces Kenya's post election violence and the experiences of women during PEV.

Background to Kenya PEV and UNSCR 1325 Process

The post election violence in 2007/2008 led to a renewed interest in the adoption of SCR 1325 following the death of more than 1,133 people and displacement of more than 650,000 people including women and children (GOK 2008).

Before the post election violence, Kenya was considered an island of peace in a troubled region due to the post cold war political crisis in Uganda, Sudan, Somalia, Rwanda and Burundi. However, the image of a peaceful state was an erroneous image propped up by the first and second president of Kenya, Jomo Kenyatta and Daniel Moi respectively. Instead of reforming the political and socio-economic inequalities of the British colonial legacy they intensified ethnic nationalism (Stewart 2010:135). This discouraged the development of the Kenyan 'nation' especially with regards to land policies that favoured their ethnic groups, sowing seeds of discontent among ethnic groups in Kenya which continue to inform Kenya's tumultuous journey of nation building (Oucho 2010:498, Stewart 2010:140). There are more than 42 ethnic groups in Kenya with the five largest comprising of Kikuyu 24%, Luhya 15%, Luo 10.4%, Kalenjin 7.9% and others 42% (Stewart 2010:135).

This trend of diverting state resources to the president's ethnic region prompted outrage from brave politicians, civil society and university students and staff, which the presidents responded to by institutionalizing repression leading to international pressure for political and economic reforms in Kenya (Throup 1998:28, Wrong 2009:14). This was the background behind the opposition party's unity under one candidate Mwai Kibaki who was overwhelmingly elected in 2002 to correct the ethnic, regional and gender inequalities while ending impunity and corruption. However the new President Mwai Kibaki was unable to further address the rising political and socio-economic inequalities mainly among ethnic inequalities leading to greater isolation of his ethnic group by the 2007 elections, setting the stage for a violent conflict in a close contest which only needed a trigger to explode.

That trigger was the declaration of Mwai Kibaki as the winner despite alleged falsification of results, a thin margin between the two leading presidential candidates of 230,000 votes, a swift swearing in by a compromised Electoral Commission of Kenya (ECK) on December 30, 2007 and the refusal to concede defeat by the Raila Odinga of Orange Democratic Movement (ODM). Kenya descended into protests, riots and violence in various hotspots where supporters of both parties killed, burned, raped others. They were allegedly supported by political leaders from their ethnic groups as concluded by the International Criminal Court (ICC) which has since charged three political leaders including the President of Kenya, Uhuru Kenyatta and his deputy president, William Ruto of crimes against humanity whose trials at The Hague are scheduled to start in November and September respectively.

By late February over 1,000 people had been killed, 400 of which were extrajudicial killings from police, over 600 women and men had suffered sexual violence as reported by the Gender Violence Recovery Centre (GVRC) at the Nairobi Women's Hospital (GOK 2008). Three types of violence have been identified which include: organized violence by ODM supporters against PNU supporters in the Rift Valley Region, retaliatory violence by the PNU supporters against ODM supporters and spontaneous violence in urban centres (GOK 2008).

Though research evidence is scant on the roles women played during the post election violence due to lack of comprehensive research, anecdotal evidence shows that women

were active participants as perpetrators of the violence and largely also as victims. As perpetrators at various levels they are also alleged to have been involved in planning and organizing for the retaliatory violence against other ethnic groups judging from the male and female list of suspects in the investigative report on PEV produced by the Kenya National Human Rights Report on the Brink of the Precipice (KNHCR 2009). At the very local level, they secretly colluded with their male family members by organizing violence and arson as evidence from local courts show (Nation Daily 2013).

As victims, women suffered immensely through rape: over 600 women were raped by the police and men from different ethnic groups especially in the slum areas of Nairobi and in the violence hot spots in the Rift Valley (GOK 2008). On January 1, 2008 thirty PNU women supporters with their children were burnt alive in a church in Kiambaa area in Eldoret in the Rift Valley as they hid from ODM militias (Nation Daily, 2008). The PNU supporters then retaliated by hiring *mungiki* an ethnic militia to avenge the deaths, arson and rape of their women by doing the same to ODM supporters living in perceived PNU strongholds. This led to further sexual and gender based violence against other women as rape was now a 'weapon of war'.

The next section will illustrate how women organized for peace in this context during the crisis and the how they engaged the ensuing peace process which was a mediation process known as the Kenya National Dialogue and Reconciliation Process.

Kenyan Women's Participation at the KNDR

Participation of women in the Kenyan crisis in 2007/8 took many forms as documented elsewhere by this author (Preston-Mcghie and Wamai 2011). At the local level, especially in slum areas such as Kibera in Nairobi women organized themselves to prevent further violence by promoting peace meetings, providing early warning information in their communities while also supporting those men and women who had suffered sexual violence to access health services while ensuring protection of women, boys and girls.(Preston-Mcghie and Wamai 2011).

At the national level, women civil society activists under the banner Kenya Women's Consultation Group (KWCG) were encouraged by former South African first lady Graca Machel to present a memorandum to the former United Nations Secretary General Kofi Annan led African Union mediation team. The women's memorandum provided women's concerns during the Kenyan crisis. One of the main recommendations of the Kenya women's civil society organizations in the memorandum they presented to the mediation led team during the height of the Kenyan post election crisis on 25th January 2008, was the adoption and implementation of SCR 1325 in Kenya to ensure women's participation in governance processes which contribute to conflict prevention, ensure women are involved as equal partners in protection of women from gender based violence among other abuses.

Invoking the spirit of SCR 1325, in the short term the Kenya Women's Consultation Group (KWCG) called for restoration of fundamental rights, security provision for internally displaced persons (IDPs), a political solution/agreement to end the Kenyan crisis and protection of women and girls from further violence. In the long term, they called for peace education, establishment of a commission to establish the truth and a Truth, Justice and Reconciliation Commission (TJRC) to address historical injustices and the strengthening of institutions to end impunity.

Two women politicians also engaged the process at Track One as politicians from the two political parties at the centre of the conflict: Dr. Sally Kosgey from the Orange Democratic Movement (ODM) and Martha Karua from the Party of National Unity (PNU) represented their political parties while the panel was advised by women peace and security advisors who also considered gendered perspectives to the post election violence as participants in a reflection meeting on how women participated in the Kenya National Dialogue and Reconciliation process (Preston-Mcghie and Wamai 2010).

United Nations Security Council Resolution 1325: Lost in Translation?

The unanimous adoption of SCR 1325 in October 2000 set the international framework for women's engagement in peace and security. Previously, women's peace and security concerns had not been adequately addressed within the UN bureaucracy and when they did they were adhoc and without any policy direction. SCR 1325 called for implementation of women's participation in three areas: in leadership positions in peacekeeping and peacemaking; increased resources for women and girls to protect themselves against gender-based violence during and after the conflict and increased efforts to support women's role in conflict prevention, especially through local women's initiatives.

After the adoption of the resolution in 2000, there was a concerted increase in efforts particularly by the United Nations to mainstream the SCR 1325 within its bureaucracy and within the UN. However, as several case studies demonstrate these efforts at the United Nations' level rarely translated to actual change in the implementation of women, peace and security concerns at the local level due to a number of challenges in implementation.

One challenge that impeded effective implementation of SCR 1325 was the lack of an effective accountability mechanism at the international and national level. This challenge was overcome at policy level by the adoption of Security Council Resolutions 1820(2008),1888(2009) and 1889(2009) which attempted to ensure greater accountability mechanisms for sexual violence related crimes and ensuring increased women's participation.

SCR 1820 specifically focused on increasing accountability for sexual violence related crimes building upon the more general SCR 1325. This resolution calls on governments and the International Criminal Court to prosecute perpetrators of violence who use rape as a weapon of war among other recommendations. SCR 1888 and 1889 expanded

SCR 1820 and SCR 1325 respectively. SCR 1888 tasked the UN Secretary General to appoint experts to monitor and advise the Secretary General in situations of conflict related sexual violence.

SCR 1889 reaffirmed SCR 1325 calling on member states and the Secretary General to develop a strategy and concrete indicators to increase participation of women through training and appointment of women to UN offices. This resolution also called for a reporting mechanism in which the Secretary General must submit a report on progress made within 6 months.

Despite these tools to increase the momentum for accountability from the United Nations and individual states for the women, peace and security resolutions, progress has been slow. Case studies from missions such as the United Nations Mission in Liberia (UNMIL), United Nations Mission in Sierra Leone (UNAMSIL) as observed by Wamai (2010) in Liberia, Hall-Martin (2010) in Kosovo, Barnes (2010) in Sierra Leone respectively among other authors assessing SCR 1325 show that UNSCR has most often been lost in translation (Barnes et al. 2010)

Various scholars have attempted to explain why SCR 1325 seems to be lost in translation 10 years later after it was adopted. Otto (2009), Shaw (2010), Pratt and Ritcher-Devroe (2011) and Willet (2010) agree that although SCR 1325 is a visionary resolution developed through a consultative process with activists, progress on adoption and implementation in individual states remains ad hoc and slow. These commentators have expressed concern over the resolution's victim like soft language which may further lead to systemic discrimination of women.

In their criticism Otto (2009:21), Shaw (2010), Pratt and Ritcher-Devroe (2011) and Willet (2010) observe that UNSCR 1325 was feminized by the drafters making it soft law as opposed to hard law that would need robust implementation from the UN Charter's Chapter 8, hence the current challenges of implementation. Swaine (2009:408) and Barrow (2009) have argued that minimum efforts have been made in operationalising SCR 1325 unlike other SCR resolutions such as 1372 on counter-terrorism which has attracted greater resources and political will in implementation.

Susan Willet (2010:150) cautions against the continued essentialist notions of women despite the decade long campaigns for greater appreciation of gender as a political tool. She observes that due to lack of mainstreaming, SCR 1325 has further secluded women because its implementation has mainly been tokenistic within the dominant epistemology of hegemonic masculinities, militarism and war (ibid). Hence many peacekeeping operations consider 1325 as important only in protecting victim 'women' as opposed to challenging the power relations further perpetuating the 'protector men and protected women binary'.

This essentialist notion is further perpetuated in peacebuilding programmes which should appreciate the gendered differences between women, men, boys and girls. Unfortunately, peacebuilding has been considered a gender neutral concept and practice which is not the case in reality as observed by Willet (2010:155). She opines

that this notion further maintains gender inequality as activities such as Disarmament, Demobilization and Reintegration(DDR), Security Sector Reform(SSR) and public sector governance reforms mainly benefit men due to the patriarchal and masculinist notions of peacebuilding (Ibid)

The next section explores the opportunities and dilemmas presented by National Action Plans in implementation of SCR 1325 before examining specific dilemmas faced in Kenya.

National Action Plans

Actions Plans were developed by activists and feminists as a way of gaining traction on SCR 1325 which was and still continues to be under-resourced, slow and ad hoc (Swaine 2009:410). They are important in advancing the implementation of women, peace and security concerns because they provide a practical tool through which civil society can hold the state to account on SCR resolutions. They also provide a comprehensive approach to implementation while raising awareness and enhancing ownership among the implementers (Swaine 2009:413). Denmark was among the first countries to begin the process in 2005 in Europe. The Cote d' Ivoire, Liberia (2009), Uganda (2008) had the earliest action plans developed in Africa.

Scholars (Swaine 2009, UN-INSTRAW 2010) have classified action plans in different categories based on the 18 action plans that had been developed by 2009. There are national action plans developed by member states and institutional action plans by intergovernmental organizations such as UN and NATO.

Three action plans developed by intergovernmental organizations (European Union, African Union and Economic Community of West African States(ECOWAS) by Barnes (2010), Diop (2010), and Ikpe (2010) respectively were compared to national action plans and the most effectively implemented were those where there was a United Nations Mission in the country such as Liberia(Wamai 2010) and UNAMSIL (Barnes 2010).

The Kenya National Action Plan (KNAP)

Kenya's National Action Plan (KNAP) is in its final stages of completion and is expected to be launched at the end of 2013 once the host ministry is settled on. The KNAP draft has been developed through a consultative process with stakeholders who included: government ministries responsible for gender, defense and foreign affairs with academics and national and regional civil society groups. Several public debates on the importance of the action plan have been led by the new UN entity for women; UN Women in partnership with local CSOs. The KNAP process team led by the National Gender Commission and supported by the UN Women and the Finnish Embassy in Kenya is currently searching for a ministry to host it and resource it.

The Kenyan NAP is unique in that it adopts a human security approach addressing social, economic, political issues around women, peace and security. It recognizes that the root causes of violence in Kenya are based on these political and socio-economic inequalities and not only elections. It is important that this NAP is interrogated during the implementation phase for any lessons that this kind of approach can provide. The KNAP appreciates the multiple roles women in Kenya played during the Kenyan peace process known as the Kenya National Dialogue and Reconciliation Process and it seeks to coordinate different actors responsible for its implementation.

The March 4 2013 Kenyan election results provided new opportunities as well as challenges for the implementation of the SCR 1325. The current president and his deputy president Uhuru Kenyatta and William Ruto were indicted by the International Criminal Court (ICC) for crimes against humanity in December 2009 which include forced displacement, arson and rape allegedly committed during the 2007/8 post election violence. This presents challenges for implementation of the KNAP which seeks to address political and socio-economic causes and threats for women's peace and security. Due to their alleged roles in masterminding the violence which included sexual violence against women, doubts have been cast on their ability to implement the KNAP especially with regards to addressing aspirations for justice and protection for the victims and survivors who include women.

However, the new regime has made significant advances in the implementation of SCR 1325 especially with regards to increasing women's participation in peace and security positions. In May 2013, the new regime appointed Ambassador Raychelle Omamo, a women's rights lawyer and former ambassador as the Minister for Defense and former Ambassador Ms. Amina Mohamed as Minister for Foreign Affairs which was commendable. They have further appointed women academics such as Dr. Monica Juma as the Defense Secretary.

These unprecedented appointments have renewed momentum for the implementation of SCR 1325 which was faced with dilemmas of integration and positioning. The next section will review the general dilemmas and the specific ones the Kenyan case presents as well as possible opportunities.

Dilemmas and Opportunities

States have faced various dilemmas in ensuring action plans are effectively implemented at the international and country levels. These dilemmas include:

1. Integration Dilemmas

There are mainly two arguments about how best to integrate SCR 1325 national action plans. There are those who propose mainstreaming the SCR within other government or development policies such as the case in Israel and Fiji as observed by the United Nation's International Research and Training Institute for Women UN-INSTRAW (2006).

There are those who advocate for the need for a separate and distinct national action plan that is well resourced. These scholars and practitioners have observed that the lack of a distinct action plan may prevent implementation of the SCR 1325 in a comprehensive manner (Swaine 2009). They draw on examples from Uganda and the Netherlands where distinct action plans have been developed and the resulting success. In Uganda, the action plan has served as a coordination point in the government for all women, peace and security concerns (Swaine 2009). In the Netherlands, a distinct action plan has created more energy and resources for women's concerns. This author has also observed greater success in implementation of SCR 1325 in Liberia through the development of a distinct action plan known as the Liberia National Action Plan and a resourced national action secretariat for implementation (Wamai 2010).

Despite the differences in these two approaches there is need for a combined approach that integrates mainstreaming of SCR 1325 while remaining distinct within bureaucracies. Practically, this has been realized by the development of strategies with action plan matrixes that address the main concerns and strategies for implementation that include the responsible institutions and resources. In the Kenyan case, this dilemma has been resolved by the combining both approaches. The KNAP process leadership proposes that a distinct coordinating unit with a ministry that will mainstream the resolution's strategies and action plan among various institutions responsible for its implementation within the government should be set up.

2. Positioning Dilemmas

The question of which ministry or which government institution should host the NAP is critical to effective implementation. In Europe most ministries of foreign affairs have taken the lead while in most African countries with NAPs gender ministries seem a popular place to house the SCR such in Liberia and Uganda as observed by various scholars (Swaine 2009; Olonisakin, Barnes and Ikpe 2010). The thrust behind the ministry's of foreign affairs leadership in SCR 1325 could be based on their ability to command resources and also influence the foreign policy at home and development policies abroad.

However, caution should be taken when hosting the NAP in foreign affairs as this may lead to 'othering' of the SCR as an obligation for implementation abroad while failing to implement it at home. For instance the United Kingdom (UK) has been accused of this 'othering' of the resolution for their development partners abroad while failing to implement the resolution at home, as civil society organizations in Northern Ireland report (Swaine 2009). Civil society organizations accused Whitehall in a 2009 publication for failing to institute policy measures on women, peace and security for Northern Ireland despite the post conflict situation in the northern region while excluding them from the UK national action plan and 1325 working group (Swaine 2009). The UK case shows the challenges and implications that may arise due to differentiating action plans between foreign and domestic policies.

Gender and women's ministries also present challenges which feminists have cautioned (Olonisakin, Barnes and Ikpe 2010, concerns are based on the experiences among feminists who have observed that gender ministries have isolated women's concerns as soft issues resulting in lesser budgetary allocations making the implementation of the NAP slow. However, gender ministries seem to have most political will in championing for the implementation of NAPs despite them being under resourced.

This positioning dilemma is a challenge in the KNAP. Initially the KNAP development process was hosted by the Ministry of Gender, Children and Social Development. After further consultation, with the stakeholders the KNAP leadership is now considering being hosted by any of the two ministries of defense and foreign affairs which are better resourced in addition to having feminist leadership which is hoped to be sympathetic to implementation of SCR 1325. It has been observed that the action plan implementation has been most successful when hosted by either of the two ministries in western countries such as in Finland. However, every country is unique and country contexts should be considered carefully before importing best practices from elsewhere.

As of September 2013, the Kenyan NAP process was still shopping for an appropriate ministry to house it while facing the dilemmas above. The current integration of the gender ministry within the large ministry of devolution in response to the constitutional requirements for a maximum of 20 ministries has further delayed the process since other potential ministries such as foreign affairs or defense can only house the NAP in the next financial year in June 2014.

3. Participation Dilemmas

Another dilemma that NAP processes face is stakeholder participation dilemmas especially the question of when and how civil society groups should be included? This is especially prevalent in countries with totalitarian regimes.

Failure to consult widely may lead to ownership dilemmas, such as when processes become United Nations' led or government led without actual contributions from national and local/regional civil society groups which would enhance ownership of the SCR 1325. Swaine (2009:423) cautions against the urgency to develop action plans by governments as a way to satisfy funders and other foreign governments and improve the state's international profile with little impact on transformation and sustainability.

The Kenyan NAP process has not faced this dilemma since civil society groups both national and regional were included from the start of the process as members of the steering committee and as experts. Through a national consultative process, the steering committee documented SCR 1325 activities that regional civil society organizations were already carrying out.

Conclusion: Opportunities for Kenyan NAP

This working paper traced the impetus behind the adoption and implementation of the SCR 1325 in Kenya. It also explored the various challenges that have impeded the implementation of SCR 1325, more than 10 years after it was adopted and other women, peace and security resolutions such as liberal peace objectives without corresponding attention to contexts. The working paper also reviewed the general dilemmas faced in action plan development elsewhere and within Kenya specifically.

In conclusion, there is need to work with women activists at the local level instead of re-labeling their work as SCR 1325 led activities. This will need effective documentation, monitoring and reporting by coordinating unit of the SCR 1325. There is also need to build capacity of civil society organizations to monitor and implement the SCR 1325 through the KNAP. The twinning relationship between Kenya and Finland should continue being supported as a useful tool for transferring lessons learnt from one country to another. The twinning concept was originally conceived by Mary Robinson, the former President of Ireland when she initiated a twinning relationship between Ireland and Liberia, for the mutual benefit of both countries since the two countries began developing actions plans at the same time as Shaw (2010) has observed.

As earlier discussed, the current indictment of the Kenyan president Uhuru Kenyatta a Kikuyu and deputy president William Ruto a Kalenjin, by the ICC for their alleged role in instigating crimes against humanity during the 2007/ post election violence presents challenges for victims and survivors. The aspirations for some victims and survivors for justice might be ignored by their ethnic communities due to the ongoing desire to 'move on' at a communal level following an elite pact between the president and deputy president in 2012(Interview, 2013). Safety of those affected who include many affected women is often comprised when political elites make elite pacts making implementation of SCR 1325 even more challenging.

There is a need to ensure that Kenya's SCR 1325 is given the political and financial support needed for it to become a truly transformative action plan despite the current political situation with the country's leadership. The KNAP is premised on the human security concept which promises to be transformative for women, peace and security concerns coupled with the new gender champions in leadership in the Defense and Foreign Affairs ministries. Review of the state of these developments after some time might provide answers to the extent these opportunities will transform the state of women, peace and security in Kenya.

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