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BRIEFING NOTE

**MITIGATING VULNERABILITIES OF WOMEN
AND CHILDREN IN ARMED CONFLICTS**

BRIEFING NOTE**MITIGATING VULNERABILITIES OF WOMEN AND CHILDREN IN ARMED CONFLICTS****I. INTRODUCTION**

1. The year 2010 heralds the African Women's Decade (2010-20) which is intended to advance gender equality by accelerating implementation of Dakar, Beijing and AU assembly Decisions on Gender Equality and Women's Empowerment (GEWE), through dual top down and bottom up approach which is inclusive of grassroots participation.-. The AU and its member states have already demonstrated a firm commitment to address issues related to women and children in armed conflicts through well-defined human rights mechanisms. Nonetheless, despite the considerable measures put in place to protect the rights of women and children during armed conflicts implementation remains fragmented. Moreover a tangible change to the status of the majority of African women and children has yet to be seen.

2. Far from decreasing, incidents of violence against women and children in armed conflicts continue unabated in many parts of Africa. Recent conflicts in Guinea and Madagascar, as well as internal and/or cross-border conflicts and mass displacement in the Democratic Republic of the Congo (DRC), Somalia, Central African Republic and Sudan's Darfur region, have seen an abuse of women and children. In the 2009 United Nations report *Children and Conflict in a Changing World*, Graça Machel detailed the high rates of children abducted, tortured and subjected to a wide range of gross human rights violations during recent conflicts.¹ For example, during Sierra Leone's conflict it was estimated that more than 10,000 children were abducted as child soldiers and in northern Uganda the Lord's Resistance Army (LRA) is thought to have forcefully recruited over 60,000 children. Thousands more children are subject to a range of violations including forced prostitution, gang rape, mutilation and economic exploitation.

3. This short report will outline both the considerable developments in the African Union's human rights architecture, as well as the challenges faced in the implementation of mechanisms aimed specifically to address issues related to women and children in armed conflicts. It will identify ways in which the Peace and Security Council can assist in devising measures to consolidate the efforts of the AU through ensuring the implementation of existing obligations. By so doing the AU can address, politically and substantially, violence against women, girls and boys in armed conflict situations.

II. CONCRETE STEPS TAKEN SO FAR BY THE AU AND OTHER LEGAL AND POLITICAL FRAMEWORKS

4. Since its foundation, the African Union has demonstrated its clear commitment to the principle of gender equality which was enshrined in Article 4 (L) of its Constitutive Act. The AU's Commission has mandated a 50 percent representation of women, resulting in half of the organization's ten commissioners being women. The AU Assembly has also created

¹ United Nations, *Machel Study 10-Year Strategic Review, Children and Conflict in a Changing World*, United Nations, New York, April 2009 [Machel Study 10-Year Strategic Review]

Women, Gender and Development Directorate in the Office of the Chairperson in order to ensure that the principle of promoting gender equality is adhered to, and to facilitate gender mainstreaming within the Commission itself and the AU as a whole. Since 2002 the Constitutive Act has been bolstered by a variety of other existing commitments and principles on children and women's rights both regionally and internationally. Six key pillars currently define the AU's gender architecture: the Constitutive Act of AU, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Solemn Declaration on Gender Equality in Africa the African Union Gender Policy, the launch of the Fund for African Women in fulfilment of **Article 11** of this SDGEA and Assembly decision which declared 2010 – 2020 as African Women's Decade.

5. In 2003 the AU adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Protocol), a legally-binding multilateral supplement to the African Charter on Human and Peoples' Rights. The Protocol entered into force in November 2005 and by February 2010 it had been ratified by 27 of the 53 AU members. A further 21 member states have signed the protocol but have yet to ratify, but five countries have yet to sign. The Protocol provides an explicit framework outlining the rights of women on the continent and specifically calls for women's protection against all forms of violence including international crimes that occur during conflicts. It also specifies that perpetrators should be brought to justice before a competent criminal court. The Protocol is also groundbreaking as the first international document to guarantee a women's right to abortion in specified circumstances. The primary responsibility for the implementation of the Protocol lies with member states who have a legal obligation to integrate the Protocol's provisions into their domestic laws.

6. To augment the Protocol the AU Heads of State and Government adopted the Solemn Declaration on Gender Equality in Africa (SDGEA) in July 2004. Among other things, the Declaration commits Heads of state and government to report annually over the progress they have made on the implementation of the SDGEA. The Solemn Declaration provides a concrete mechanism to harmonise reporting with the Protocol. For example it makes provisions for the inclusion of women in peace processes, including the prevention, resolution, management of conflicts and post-conflict reconstruction; the prohibition of the recruitment child soldiers; and the prohibition of the abuse of women as wives and sex slaves. More broadly it calls for sensitization about gender-based violence. The AU has also set the target of 2020 for equal representation of women and men in politics and decision-making to be realised.

7. The AU made an important further development in 2009 by the adoption of the first ever African Union Gender Policy (AUGP) and its Action Plan. The AUGP is complemented by the launch of the Fund for African Women during 2010 Assembly. The Fund for African Women was launched as one of the highly celebrated decision by African Women. In this regard, the AUC-Gender Directorate is working towards mobilizing financial support for this fund. Through this Fund, financial resources will be mobilized to support development programmes and projects for women, to fight poverty, and close the gender gap and thereby halt African women's marginalization. Also 2010-2020 was declared by the Assembly the African Women's Decade. The objective of the African Women's Decade is to re-invigorate commitments to accelerate implementation of agreed global and regional commitments of gender equality and women's empowerment. The official launching of the

African Women's Decade, is expected to take place in October 2010, 15 on the occasion of the International Day for Rural Women. During the Decade, the Gender Directorate will work very closely with the AU Peace and Security Department (PSD), the Peace and Security Council (PSC) and the Panel of the Wise in relation to the United Nations Security Council Resolutions: 1325, 1820, 1888 and 1889 with particular focus on violence against women, peace building and reconstruction.

8. The AUC, Gender Directorate jointly with Peace and Security Department have developed a Gender Training Manual for AU Peacekeepers and the validation workshop for the manual is planned to be held in April 2010. This Validation workshop will be followed soon after by a TOT (Training of Trainers) workshop, which will consist of a core group of TOTs drawn from Peace and Security Training Institutions in Troop sending countries. The TOTs will be equipped with in depth gender skills to be able to impart this knowledge to their Peacekeepers in their institutions. Also in 2010 activities, Gender Directorate will recruit a gender Experts to be situated in Peace and Security Department and AU Liaison Offices that will report to the Department of PS and Gender Directorate on issues of gender.

9. The AU's gender architecture is complemented by similar commitments made by the Regional Economic Communities (RECs). In particular the Southern African Development Community (SADC) 1997 Declaration on Gender and Development and its Addendum on Violence Against Women and Children. SADC also adopted a gender protocol in 2008 which specifies areas that resonate with the Women's Protocol such as the need for equality in accessing justice, as well as women's involvement in conflict resolution. In addition to the protocol's calls for 50 percent representation by women at all levels of government by 2015, it calls for governments in the region to prohibit all forms of gender-based violence. It also contains a provision calling for the trial of perpetrators of all forms of gender-based violence before competent courts of justice.

10. Internationally there have been increasing commitments to mitigate the impact of armed conflict on women including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW - 1979) which has been ratified by 45 African governments, the Dakar Platform for Action (1994), the Beijing Platform for Action (1995), UNSC Resolution 1325 (2000) on Women, Peace and Security and Resolution 1820 which explicitly links sexual violence as a tactic of war with the maintenance of international peace and security. Most recently in September 2009 the UN committed to the establishment of a new gender-equality entity and appointed a Special Representative to the United Nations Secretary General on Sexual Violence in Conflict.

11. With regards to the rights of children, the Organisation of African Unity (OAU) adopted the African Charter on the Rights and Welfare of the Child (ACRWC) in 1990 which entered into force on 29 November 1999.² Among other things, the Charter prohibits the recruitment of children by armed actors and specifically identifies the need to respect international humanitarian law regarding children during armed conflicts. It also explicitly prohibits the sexual exploitation of children and calls for the protection of internally displaced and refugee children. The Charter defines children as under eighteen years of age

² OAU Doc. CAB/LEG/24.9/49 (1990) (available at <http://www.africaunion.org/root/au/Documents/Treaties/Text/A.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf>).

and was the first regional instrument to protect children's rights. The 1989 Charter was created in response to the United Nations Convention on the Rights of the Child (CRC), since many members of the OAU felt the CRC overlooked key socio-cultural and economic realities faced by children in Africa. By February 2010, 45 member states had ratified the Charter. Eight countries have not yet ratified – the Central African Republic, Djibouti, Democratic Republic of the Congo, São Tomé and Príncipe, Somalia, Sahrawi Arab Democratic Republic and Tunisia. The ACRWC was buttressed in 2001 through the formation of the 11-member African Committee of Experts on the Rights and Welfare of the Child which was tasked with promoting and protecting the rights established by the ACRWC and monitoring their implementation.

12. Beyond the Charter there are other regional mechanisms in place to protect children's rights. For example among NEPAD's Peer Review Mechanism's outlined objectives is the protection of the rights of children and young people. Furthermore, a number of recent peace agreements such as in Liberia and Uganda have made provision for the inclusion of programmes to address the impact of the conflict on children and the need for special measures in disarmament, demobilisation and reintegration (DDR) programmes.

13. The plight of children in armed conflicts came to international attention as a result of the 1996 study and the subsequent Report on the Impact of Armed Conflict on Children undertaken by Graça Machel for the UN. The report's recommendations provided the basis for a number of international instruments to address harms committed against children. In 2000 an Optional Protocol on the involvement of children in armed conflict was added to the UN Convention on the Rights of the Child. This focused on the recruitment of child soldiers and set a minimum age of eighteen. The UNSC has also passed a number of resolutions on children in armed conflicts including Resolution 1612 (2005) which identifies the recruitment or use of children as soldiers as a war crime and calls for the "naming and shaming" of countries who allow the abuse of children during armed conflict. The resolution institutes a monitoring and reporting mechanism, which is initiated by a country's or non-state actors' recruitment or use of child soldiers, centred on six identified areas of violations against children including abduction and denial of humanitarian access. Critically it allows for the identification not only of member states that violate children's rights during conflicts but also non-state actors who have been key perpetrators in this area. Resolution 1882 (2009) extended the definitions of violations against children that trigger monitoring and reporting beyond the recruitment of child soldiers to include patterns of killing or maiming of children and/or rape and other sexual violence against children. To bolster these resolutions, a Security Council Working Group on Children and Armed Conflict was formed in 2005 and in 2009 a Special Representative on Violence Against Children (SRSG) was created. Of further significance is Graça Machel's strategic review 10 years report which identifies many of the gaps that continue to make children vulnerable during armed conflicts.

III. GAPS AND CHALLENGES

14. While significant progress has been to outline a comprehensive human rights architecture on the continent, and within this to provide mechanisms to both prevent and address violence against women and children in conflicts, gross violations including sexual violence, displacement, loss of life and livelihoods remain widespread. Despite the adoption

of various resolutions and legal documents impunity for violations remains widespread and this is compounded by women's marginalization in peace processes and post-conflict reconstruction programmes. As with all international and regional agreements, the central challenge is to affect the shift from ratification to domestication and implementation in order to realize the rights of all Africans.

15. There are a number of clear challenges faced on the continent which impedes the implementation of the AU's human rights architecture. First, there has been regression in the continent's commitment to democratic rule as has notably been demonstrated by the resurgence of unconstitutional changes of Governments, while the violence and tensions that have recently marred a number of elections pose new challenges. These have at times been accompanied by widespread gender-based violence. Second, there has been a failure to address the ongoing conflicts in some regions, which have resulted in systematic violations committed against women and children. Third, the global economic crises have further entrenched poverty and increased the vulnerabilities of women and children. This has also impacted on funding for already under-resourced gender ministries across the continent which spurred the calls for the Decade for Women to ensure gender remains a fundamental concern at the AU.

16. Despite the AU's commitment to involve women in conflict resolution and peacebuilding, this is still not reflected in their participation during peace negotiations when their needs for justice could be outlined. According to a 2009 study conducted by UNIFEM of 300 peace agreements in 45 conflicts, only ten countries explicitly mentioned sexual violence and only five of these have been in Africa. Further, in their review of 22 peace processes which have taken place since 1992, UNIFEM revealed that women made up a mere 7.5 percent of negotiators and fewer than two percent of mediators. Thus greater action is required to ensure that peace negotiations address sexual violence, that women are involved in these processes and that these crimes are treated on an equal basis with other international crimes.

17. It is clear that the full implementation of the commitments in the AU Protocol on Women would result in not only mitigating the vulnerabilities of women in armed conflicts but would also promote the protection of children as well furthering the AU's development agenda. However there are a number of gaps impeding the implementation of the Protocol. Furthermore, despite the fact that the Solemn Declaration included a commitment to universal ratification of the Protocol by 2005 some countries have still not signed. Moreover 21 signatories have failed to ratify let alone domesticate. Those member states that have ratified also face a number of challenges due to the lack of a harmonized reporting framework which impedes the prospects of implementation. A further gap to the Protocol is the lack of mechanisms to penalise countries that fail to comply with their reporting requirements.

18. While there have been a number of measures to disseminate information about the Protocol and other instruments by both the AU and civil society, many women continue to be unaware of their rights or how to claim them. Further those women most aware of the various human rights instruments in existence tend to be those based in the urban areas; there is a need to reach beyond this constituency to the majority of women in rural areas and those in conflict zones. Moreover, limited awareness of the Protocol is compounded by

the existence of dual legal systems in many African countries which allow harmful practices identified by the Protocol to continue. The Implementation of the Protocol is further frustrated by the heavy reliance on gender machineries to be responsible for implementation instead of developing an approach whereby all sectors of government contribute to executing commitments to gender equality. This process could be strengthened through ensuring that women's and children's rights are fully integrated within development plans including poverty reduction strategies.

19. In terms of the mechanisms aimed specifically to address the plight of children in armed conflicts, the African Charter on the Rights and Welfare of the Child overlooks the critical role that non-state actors play in the violation of children's rights during armed conflicts. The Charter also fails to include mechanisms that ensure that member states mobilise resources to ensure that children's rights are protected. This has proved a challenge for the African Committee which has been plagued by insufficient funding.

20. Both the AU's Charter and UN instruments have key limitations due to their narrow focus on children as soldiers, which masks the multiple ways children are affected by conflicts. It also often conceals the way that violations of children are gendered with girls being subject to a range of gender-based abuses during conflicts. Neither the AU nor the UN have fully recognized numerous crimes that children are subject to during armed conflicts such as the enslavement of children for the exploitation of natural resources or enslavement for the purpose of serving armed forces. Furthermore, there are numerous grave violations of children's rights that occur outside of conflicts which need to be addressed in those countries undergoing widespread instability or authoritarian rule. Problems are also widespread over the process of reporting. The role of civil society providing shadow reporting is critical in this regards.

21. Nonetheless, despite the many challenges facing women and children during conflicts, post-conflict settings have at times revealed that there is an opportunity to promote women's leadership, enhance access to justice, and build momentum for fundamental children and women's rights reform. While women's organisations are generally not present and women are severely underrepresented at the tables where peace agreements are negotiated, transitional justice mechanisms offer women other opportunities to participate in and influence the peace-building process in order to address not just instances of violence during conflict but also the continuum of violence that often persists in "peace times". Transitions thus present an opportunity to promote broad structural and real change in ensuring the realisation of women's and children's rights in Africa.

IV. RECOMMENDATIONS AND THE WAY FORWARD

22. No efforts should be spared to ensure the African Women's Decade (2010 – 2020) is used to implement the commitments made to mitigate the vulnerabilities of women and children in armed conflicts. In order to achieve this, the following is recommended :

- Urge African countries to ratify, domesticate and implement the AU Protocol on Women and the African Charter on the Rights and Welfare of the Child with the aim

of ensuring all countries will have ratified the Protocol during the course of the African Women's Decade (2010-2020);

- Encourage high level visits to member states who have not ratified the Protocol and the Charter in order to encourage heads of states to ratify and domesticate;
- Encourage those states that have already ratified to take the necessary legislative and judicial measures in order to domesticate and achieve their legal obligations under the Protocol and Charter;
- Emphasis on the need for the Gender Expert to be recruited in every AU Liaison Office as soon as possible
- Ensure the appointment of Gender Focal Points in each AU peacekeeping mission
- Ensure the appointment of women as Ambassadors of Peace and Patron of the Year of Peace 2010
- Ensure the appointment of women as Special Envoys and Special Representatives of the African Union
- Call for involvement of women in Peace process, including the prevention, resolution, management of conflict and post-conflict reconstruction in Africa in line with UNSCR 1325, 1820, 1888 and 1889
- Facilitate harmonized reporting on the progress made by member states in implementing women's and children's rights in the Protocol, the Charter and other international rights instruments;
- Encourage civil society to provide shadow reports on the implementation of the Protocol and the Charter;
- Urge member states to include progress on the implementation on the Protocol within their annual reports to the AU Assembly of Heads of State as required by the Solemn Declaration on Gender Equality in Africa;
- Put in place effective monitoring mechanisms to measure the implementation of the Protocol including adopting best practices on the implementation of women's rights;
- Continue to involve civil society and women's organisations in a coordinated advocacy campaign on the ratification, domestication and implementation of the Protocol.
- Harmonise links between the AU's human rights structures and the AU Committee of Experts on the Rights and Welfare of the Child;
- Ensure the African Charter is expanded to address the role of non-state actors in the violation of children's rights during armed conflicts;
- Appoint AU Special Representatives on Violence Against Women and Violence Against Children;
- Address the gender dimension of violence against children by urging member states to address the specific needs of girls as part of a comprehensive violence-prevention strategy;
- Prioritise prevention by identifying the causes of the vulnerabilities of women and children and respond with recommendations to mitigate risk; and.
- Ensure accountability and end impunity by prosecuting perpetrators of violence against women and children at the national and regional level.