

Women and Peace Agreements

Tiina Pajuste

Abstract:

This article provides an overview of the ways in which issues related to women have been addressed in peace agreements. To provide the context for analysis, the relevant international legal rules and policies of the main international organisations involved in peace negotiations are looked at, in order to highlight possible binding obligations for states. The role of women is addressed throughout the various phases of conflict resolution from peace negotiations to the post-conflict stage. As peace agreements tend to have three main categories of provisions – dealing with the participation, protection and advancement of women – this article is divided into corresponding sections. It will study the variety of ways in which these issues have been addressed in peace agreements, highlighting possible weaknesses and discrepancies with the relevant legal rules and the gender mainstreaming policy.

Keywords:

Women, peace agreements, conflict, human rights.

Introduction

Conflicts have devastating effects on everyone involved (either voluntarily or involuntarily). But certain groups experience additional problems and, accordingly, deserve increased focus in a conflict and post-conflict setting. The focus of this article is on one such group – women. In armed conflicts, women can face additional issues due to their gender, their role as the primary caretaker of the household and family, and their weaker position in society. The conflict can impact the mental and physical health of women and their economic survival, and can lead to the breakdown of their families and communities. To redress such effects on women, it is important to ensure that gender issues are addressed in the process of establishing peace after the conflict.¹

Peace processes provide a moment of possible change in a society and an opportunity to reconfigure the state machinery. Including gender issues in peace agreements can provide the starting point for achieving political, legal and social gains for women. While the provisions of a peace agreement do not come with a guarantee of implementation, and the omission of an issue does not imply that it could not be addressed later on, issues that are not specifically mentioned in an agreement can be difficult to prioritise subsequently.² In addition, the Security Council has acknowledged that an understanding of the impact of armed conflict on women and girls, and effective institutional arrangements to guarantee their protection and full participation in peace processes would contribute significantly to the promotion and maintenance of international peace and security. Accordingly, involving women is not only necessary to advance their position, but also to improve peace-making in general.³ Accordingly, involving women is not only necessary to advance their position, but also to improve peace-making in general.

This article will look at the various aspects of the inclusion of issues related to women in peace agreements. This will be done with reference to the international legal rules regulating the area, and by exploring possible divergence of peace agreement provisions with these rules. The role of women will be addressed in the various phases of conflict resolution: peace negotiations, the resulting agreements, and the post-settlement stage. The main issues considered in this article are: (a) the participation of women, (b) the protection of women from violence, and (c) the advancement of women. The article will study the variety of ways in which these issues have been addressed in peace agreements that have been concluded from the mid-20th Century until now.

¹ See further in Naomi R. Cahn, "Women in Post-Conflict Reconstruction: Dilemmas and Directions", 12 *William and Mary Journal of Women and the Law* 335 (2006), pp 335-7; Christine Chinkin, "Gender, Human Rights, and Peace Agreements", 18(3) *Ohio State Journal on Dispute Resolution* 867 (2006), p 868, and Margaret E. McGuinness, "Women as Architects of Peace: Gender and the Resolution of Armed Conflict", 15 *Michigan State Journal of International Law* 63 (2006), p 66.

² This is also highlighted in Christine Bell and Catherine O'Rourke, "Peace Agreements or Pieces of Paper? The Impact of UNSC Resolution 1325 on Peace Processes and Their Agreements", 59 *International and Comparative Law Quarterly* 941 (2010), pp 946-7.

³ Women and Peace and Security, Report of the Secretary-General, UN Doc. S/2010/498, 28 September 2010, para 1, referring to SC Res. 1325 (2000), 31 October 2000.

2. Legal Background

There is a wide range of treaties dealing with the rights of women that are relevant in assessing the role of women in peace agreements:

- Convention on the Elimination of All Forms of Discrimination against Women [CEDAW] (1979)⁴ and the Optional Protocol to the Convention (1999)⁵
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)⁶
- Convention against Discrimination in Education (1960)⁷
- Discrimination (Employment and Occupation) Convention (1958)⁸
- Convention on the Nationality of Married Women (1957)⁹
- Convention on the Political Rights of Women (1952)¹⁰
- Equal Remuneration Convention (1951)¹¹
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)¹²
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2003)¹³

In addition, the following declarations have been proclaimed by the UN General Assembly:

- Declaration on the Elimination of Violence against Women (1994)¹⁴
- Declaration on the Protection of Women and Children in Emergencies and Armed Conflicts (1974)¹⁵
- Declaration on the Elimination of Discrimination against Women (1967)¹⁶

Relevant provisions can also be found in general human rights instruments. Building on the Universal Declaration on Human Rights¹⁷, the International Covenant on Civil and Political Rights [ICCPR] reaffirms the rights to equality and equal protection under the law, as well as the right to be free from all forms of discrimination.¹⁸

If fully implemented, the rights guaranteed in ICCPR would go a long way toward bringing about gender equality¹⁹. The International Covenant on Economic, Social and Cultural Rights [ICESCR], too, contains guarantees that could assist in promoting gender equality. For example, Article 7 of the ICESCR requires “fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work”.²⁰

⁴ Convention on the Elimination of All Forms of Discrimination against Women, GA Res. 34/180, UN Doc. A/34/46, *entered into force* 3 September 1981.

⁵ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 2131 UNTS 83, *entered into force* 22 December 2000.

⁶ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 521 UNTS 231, *entered into force* 9 December 1964.

⁷ Convention against Discrimination in Education, 429 UNTS 93, *entered into force* 22 May 1962.

⁸ Discrimination (Employment and Occupation) Convention (ILO No. 111), 362 UNTS 31, *entered into force* 15 June 1960.

⁹ Convention on the Nationality of Married Women, 309 UNTS 65, *entered into force* 11 August 1958.

¹⁰ Convention on the Political Rights of Women, 193 UNTS 135, *entered into force* 7 July 1954.

¹¹ Equal Remuneration Convention (ILO No. 100), 165 UNTS 303, *entered into force* 23 May 1953.

¹² Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 UNTS 271, *entered into force* 25 July 1951.

¹³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2237 UNTS 319, *entered into force* 25 December 2003.

¹⁴ Declaration on the Elimination of Violence against Women, GA Res. 48/104, 20 December 1993.

¹⁵ Declaration on the Protection of Women and Children in Emergencies and Armed Conflicts, GA Res. 3318(XXIX), 14 December 1974.

¹⁶ Declaration on the Elimination of Discrimination against Women, GA Res. 2263(XXII), 7 November 1967.

¹⁷ Universal Declaration of Human Rights [UDHR], GA Res. 217A (III), UN Doc A/810 at 71 (1948).

¹⁸ E.g. Articles 2(1), 3, 26, International Covenant on Civil and Political Rights, 999 UNTS 171, *entered into force* 23 March 1976.

¹⁹ This point is made in Eve M. Grina, “Mainstreaming Gender in Rule of Law Initiatives in Post-Conflict Settings”, 17 *William and Mary Journal of Women and the Law* 435 (2010-2011), p 443.

²⁰ Article 7, International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3, *entered into force* 3 January 1976.

Probably the most important instrument in relation to women's rights is the Convention on the Elimination of All Forms of Discrimination against Women [CEDAW]. It has been described as the international bill of rights for women²¹. Under CEDAW, states parties must incorporate gender equality into all levels of domestic law from their constitutions down and take all appropriate measures to eliminate discrimination against women²². In October 2013, the Committee on CEDAW issued General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations²³. The General Recommendation tries to further state parties' implementation of CEDAW in relation to situations of conflict. It outlines the requirements of the application of CEDAW to conflict prevention, conflict and post-conflict situations by member states. Among other things, the Committee states that:

“Protecting women's human rights at all times, advancing substantive gender equality before, during and after conflict and ensuring that women's diverse experiences are fully integrated into all peacebuilding, peacemaking, and reconstruction processes are important objectives of the Convention. The Committee reiterates that States parties' obligations continue to apply during conflict or states of emergency without discrimination between citizens and non-citizens within their territory or effective control, even if not situated within the territory of the State party.”²⁴

The detailed rules contained in CEDAW and the other international instruments will be looked at in the relevant sections of this article.

3. The Gender Mainstreaming Policy

One important strategy for promoting gender equality and women's rights is the gender mainstreaming policy. Gender mainstreaming appeared for the first time in international texts after the third UN World Conference on Women, held in Nairobi in 1985, in relation to the debate within the UN Commission on the Status of Women regarding the role of women in development.²⁵ It took several more years before references to gender mainstreaming became more frequent in the documents of various international organisations.

In 1993, the UN General Assembly issued the Vienna Declaration and Programme of Action, proclaiming that the “equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity”²⁶. The mainstreaming idea was featured at the Fourth World Conference on Women in Beijing in 1995 and was cited in the document that resulted from the conference:

“In addressing the inequality between men and women in the sharing of power and decision-making at all levels, Governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes so that before decisions are taken, an analysis is made of the effects on women and men, respectively”.²⁷

In 1997, the Economic and Social Council defined gender mainstreaming as “the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels ... in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated”.²⁸

In the context of conflict resolution and post-conflict peacebuilding, the mainstreaming policy was introduced in October 2000 by Security Council Resolution 1325.²⁹ The adoption of the resolution was the culmination of years of concerted appeals and efforts, especially by civil society and women's organisations, to draw attention to and seek action to reverse the brutal treatment of women and girls, the denial of their human rights and their exclusion from decision-making in situations of armed conflict.³⁰ In this resolution, the Security Council calls upon governments and other parties to take steps toward the implementation of the eighteen actions outlined in it. The eighteen points are clustered into four categories.

²¹ Shelley Inglis et al, CEDAW and Security Council Resolution 1325: A Quick Guide, UN Development Fund for Women 5 (2006).

²² Article 2, CEDAW.

²³ Committee on the Elimination of Discrimination against Women, General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-conflict Situations, CEDAW/C/GC/30, 18 October 2013.

²⁴ *Ibid*, para 2.

²⁵ Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, UN Doc. A/CONF.116/28/Rev.1, July 1985, pp 30, 44, 66, 274.

²⁶ World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, UN Doc. A/CONF.157/23, 12 July 1993, para 37.

²⁷ Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, UN Doc. A/CONF. 177/20 (1995), para 189.

²⁸ UN Economic and Social Council, Report of the Economic and Social Council for 1997, UN Doc. A/152/3, 18 September 1997, p 28.

²⁹ SC Res. 1325 (2000), 31 October 2000.

³⁰ Women and Peace and Security, Report of the Secretary-General, UN Doc. S/2010/498, 28 September 2010, para 1.

These categories have been called the “four Ps”: participation, protection, prevention and peacekeeping.³¹

Firstly, Resolution 1325 mandates participation of women at all levels of decision-making. The Resolution stresses “the importance of [women’s] equal *participation* and full involvement in all efforts for the maintenance and promotion of peace and security”.³² Other provisions lay down an obligation to increase the number of women in peace negotiations, peace operations and in decision-making in general. The resolution also urges the Secretary-General to nominate women as special representatives and highlights the need to consult with women and women’s organisations.

Secondly, the resolution lays down a requirement for the *protection* of women and girls from sexual and gender-based violence. It reaffirms “the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts”. The resolution also emphasises that all states are responsible for putting an end to impunity and prosecute those responsible for war crimes relating to sexual and other violence against women and girls.³³

Thirdly, Resolution 1325 has provisions dealing with *prevention*. Prevention has two aspects in this context – the prevention of violence against women and the prevention of conflicts. With regard to the latter, the resolution reaffirms “the important role of women in the prevention and resolution of conflicts and in peacebuilding”.³⁴ As examples of the part they can play, activities such as early warning and defusing tensions and the likelihood of conflict at community-level have been highlighted. With regard to the prevention of violence towards women, there is overlap between the provisions mentioned above with regard to *protection*.

Fourthly, Resolution 1325 dictates the inclusion of gender perspectives in *peacekeeping* operations. It states “the urgent need to mainstream a gender perspective into peacekeeping operations”. The main method foreseen for doing this is training. The resolution requests the Secretary-General to “provide to Member States training guidelines and materials on the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peacebuilding measures” and invites states to incorporate these elements “into their national training programmes for military and civilian police personnel in preparation for deployment, and further requests the Secretary-General to ensure that civilian personnel of peacekeeping operations receive similar training”. The resolution then urges “Member States to increase their voluntary financial, technical and logistical support for gender sensitive training efforts”.³⁶

These “four Ps” are interconnected and best addressed in a systematic manner. They have been built on by later Security Council resolutions. There have been six subsequent related resolutions that broaden the scope of Resolution 1325 and encourage its implementation.³⁷ The key points of those resolutions are highlighted in Table 1, below.³⁸

Res 1820 (2008)	<ul style="list-style-type: none"> - focuses on the need for protection of women from gender-based violence, demands appropriate measures of protection - states that sexual violence in conflict constitutes a war crime - highlights women’s victimisation versus women’s empowerment - urges increased participation of women in peace talks
Res 1888 (2009)	<ul style="list-style-type: none"> - complements Resolution 1820 on gender-based violence in conflict - promotes accountability mechanisms - mandates the appointment of a Special Representative on Sexual Violence and gender advisors within peacekeeping missions

³¹ E.g., International Civil Society Action Network and MIT Center for International Studies, “What the Women Say: Participation and UNSCR 1325. A Case Study Assessment”, October 2010, available online at: http://web.mit.edu/cis/pdf/WomenReport_10_2010.pdf [accessed 1 August 2016], p 15. Though most commentators agree on the first three P’s – participation, prevention, and protection – other lists of categories or elements have also been offered, such as participation, protection, gender training, inclusion of gender perspectives, and prevention.

³² Preamble, SC Res. 1325 (2000), 31 October 2000.

³³ Preamble, para 11, SC Res. 1325 (2000), 31 October 2000.

³⁴ Ibid, preamble.

³⁵ NGO Working Group on Women, Peace and Security, “Security Council Resolution 1325: Basic Overview”, available online at: http://www.womenpeacesecurity.org/media/Basic_1325_PP_ENG.pdf [accessed 5 August 2015], p 20.

³⁶ Paras 6, 7, SC Res. 1325 (2000), 31 October 2000.

³⁷ SC Res. 1820 (2008), 19 June 2008; SC Res. 1888 (2009), 30 September 2009; SC Res. 1889 (2009), 5 October 2009; SC Res. 1960 (2010), 16 December 2010; SC Res. 2106 (2013), 24 June 2013; and SC Res. 2122 (2013), 18 October 2013.

³⁸ This table builds on a similar one provided in Barbara Miller et al, “Women in Peace and Security through United Nations Security Resolution 1325: Literature Review, Content Analysis of National Action Plans, and Implementation”, May 2014, available online at: http://www.peacewomen.org/assets/file/NationalActionPlans/miladpournikanalysisdocs/igis_womeninpeaceandsecuritythroughunscr1325_millerpournikswaine_2014.pdf [accessed 5 August 2016], p 3. See further on relevant SC resolutions in Dina Francesca Haynes et al, “Women in the Post-Conflict Process: Reviewing the Impact of Recent U.N. Actions in Achieving Gender Centrality”, 11 *Santa Clara Journal of International Law* 189 (2012), p 198.

Res 1888 (2009)	<ul style="list-style-type: none"> - complements Resolution 1820 on gender-based violence in conflict - promotes accountability mechanisms - mandates the appointment of a Special Representative on Sexual Violence and gender advisors within peacekeeping missions
Res 1889 (2009)	<ul style="list-style-type: none"> - calls for indicators to measure the implementation of Resolution 1325 - includes the of concept of women's empowerment
Res 1960 (2010)	<ul style="list-style-type: none"> - requires a monitoring and reporting framework to be set up to track sexual violence in conflict - emphasises the need to address sexual violence during conflict and by UN personnel/peacekeepers - asks states to deploy greater numbers of female police and military personnel in peacekeeping operations
Res 2106 (2013)	<ul style="list-style-type: none"> - addresses impunity and operationalises guidance on sexual violence in conflict - addresses areas of justice, women's empowerment, arms, women's human rights, and civil society engagement
Res 2122 (2013)	<ul style="list-style-type: none"> - builds on the participation elements of the women, peace and security agenda - addresses issues of women's empowerment, access to justice, information and documentation of human rights violations, civil society engagement - requests more briefings for the Security Council from various entities on issues of women, peace and security

The CEDAW Committee's General Recommendation No. 30, mentioned in the previous section, specifically references these resolutions (along with the original Resolution 1325) and connects them to the aims of CEDAW. It states that the implementation of the resolutions "must be premised on a model of substantive equality and cover all rights enshrined in the Convention".³⁹ The General Recommendation also suggests that the CEDAW reporting procedure should be used to report on implementation of these resolutions, which would enhance the enforcement mechanisms available.⁴⁰

The gender mainstreaming policy is by no means limited to the UN; it has been adopted over the years by a number of other organisations. For example, the Council of Europe Committee of Ministers adopted a Recommendation on Gender Mainstreaming already in 1998.⁴¹ It stated that "one of the main strategies to achieve effective equality between women and men is gender mainstreaming" and that "the implementation of the strategy of gender mainstreaming will not only promote effective equality between women and men, but also result in a better use of human resources, improve decision-making and enhance the functioning of democracy".⁴² Gender mainstreaming was pushed up in the agenda again in 2012, with the launch of the Transversal Programme on Gender Equality and the adoption of the first ever Council of Europe Gender Equality Strategy 2014-2017, which includes the realisation of gender mainstreaming in all policies and measures as one of the five strategic objectives.⁴³ Moreover, the organisation has appointed Gender Equality Rapporteurs (GER) in its institutional bodies and set up monitoring mechanisms, which have led to a coordinated and sustained effort to introduce a gender equality perspective in all policies and at all levels of the Council of Europe.⁴⁴

The European Union is also a firm supporter of the gender mainstreaming policy and its application in crisis management. A High Level Group on gender mainstreaming was set up in 2001 and it is composed of high level representatives responsible for gender mainstreaming at the national level. The Group is chaired by the European Commission and has regular meetings that are convened in collaboration with the Presidency.⁴⁵ The EU has made UN Security Council Resolution 1325 a reference document for European Security and Defence Policy [ESDP] operations and developed a framework for gender mainstreaming. For example, it adopted Council Conclusions on Promoting Gender Mainstreaming in Crisis Management, which, among other things, emphasises that:

³⁹ Committee on the Elimination of Discrimination against Women, General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-conflict Situations, CEDAW/C/GC/30, 18 October 2013, para 26.

⁴⁰ Barbara Miller *et al.*, "Women in Peace and Security through United Nations Security Resolution 1325: Literature Review, Content Analysis of National Action Plans, and Implementation", May 2014, available online at: http://www.peacewomen.org/assets/file/NationalActionPlans/miladpournikanalysisdocs/igis_womeninpeaceandsecuritythroughunsr1325_millerpournikswaine_2014.pdf [accessed 5 August 2016], p 47.

⁴¹ Council of Europe, Committee of Ministers, Recommendation No. R (98) 14 of the Committee of Ministers to Member States on Gender Mainstreaming, 7 October 1998.

⁴² *Ibid.*, preamble.

⁴³ Council of Europe, Gender Equality Strategy 2014-2017, February 2014, available online at: http://www.coe.int/t/dghl/standardsetting/convention-violence/Docs/Council_of_Europe_Gender_Equality_Strategy_2014-2017.pdf [accessed 5 August 2016].

⁴⁴ Information available at the Council of Europe website at: http://www.coe.int/t/dghl/standardsetting/equality/03themes/gender-mainstreaming/index_en.asp [accessed 5 August 2016].

⁴⁵ Information available at the European Commission website at: http://ec.europa.eu/justice/gender-equality/other-institutions/gender-mainstreaming/index_en.htm [accessed 5 August 2016].

“Gender perspective needs to be fully integrated in peace building. All reconstruction efforts should draw on the knowledge and expertise of women’s groups and networks within the community. The Council encourages the development of targeted EU activities to promote gender equality and the role of women in post-conflict situations.”⁴⁶

The EU also has a Check List to Ensure Gender Mainstreaming and Implementation of UNSCR 1325 in the Planning and Conduct of ESDP Operations, which should be used by military and civilian planners in member states and in the Council Secretariat. It provides concrete examples of what can be done during the different stages of the planning process.⁴⁷ This document is complemented by another EU document on Implementation of UNSCR 1325 in the Context of ESDP, which also proposes measures to bring gender mainstreaming to life in relation to ESDP operations.⁴⁸

The African Union has also adopted the gender mainstreaming policy. It is most clearly reflected in the 2009 African Union Gender Policy, which acknowledges that the AU’s approach to gender equality “has been informed by UN frameworks”, mentioning Resolution 1325 among other documents. The AU Gender Policy declares as its main purpose “to establish a clear vision and make commitments to guide the process of gender mainstreaming and women empowerment to influence policies, procedures and practices which will accelerate the achievement of gender equality, gender justice, non discrimination and fundamental human rights in Africa.”⁴⁹

Other organisations that have supported Resolution 1325 principles directly through developing and adopting a Regional Action Plan are NATO, ECOWAS and the Pacific Islands Forum.⁵⁰ Considering the wide range of instruments that now contain references to gender mainstreaming, it can be concluded that the policy of gender mainstreaming has become firmly established in the framework of conflict resolution.

The gender mainstreaming policies of the various international organisations, along with the relevant instruments and rules of international law are part of the framework in which to analyse what the role of women in peace agreements is and whether it has changed (partly) as a result of these rules and policies. In addition to binding treaty obligations, further obligations arise for member states from decisions of the relevant organisations and the organisations themselves need to maintain consistency with their policies.

Having looked at the legal background, this article will now move on to demonstrate the various ways in which issues regarding women have been incorporated into peace agreements. Each following section will highlight relevant international rules and instruments in relation to the issue and look at the various ways in which the matter has been addressed. As mentioned above, the main issues that will be considered in this section are: (a) the participation of women, (b) the protection of women from violence, and (c) the advancement of women.

4. Participation

The Need and Obligation to Involve Women

In many states where conflicts occur, women may be systematically excluded from public life by local custom and tradition; and this situation is perpetuated when women are excluded from the various stages of the peace process.⁵¹ Moreover, there is a lot to be gained by involving women in the post-conflict reconstruction process. Firstly, it can help address the potentially different experiences of women during and after conflict.⁵² An effective peace process needs to be built on the widest base of experience and, accordingly, must consider what women had to endure during the conflict and what kind of enormous responsibilities they have in the post-conflict setting. Involving women in the peace process needs to entail listening and responding to the diverse experiences of women who have lived through the conflict.⁵³

Secondly, involving women helps to move women from being perceived solely as victims of conflict to agents for transformation and rebuilding. Past conflicts have demonstrated how women can create movements, initiatives and

⁴⁶ Council Conclusions on Promoting Gender Equality and Gender Mainstreaming in Crisis Management, EU Doc. 14884/1/06, 11 November 2006, para 6.

⁴⁷ Check list to Ensure Gender Mainstreaming and Implementation of UNSCR 1325 in the Planning and Conduct of ESDP Operations, EU Doc. 12068/06, 27 July 2006, para 1.

⁴⁸ Implementation of UNSCR 1325 in the context of ESDP, EU Doc. 11932/2/06, 29 September 2005.

⁴⁹ African Union Gender Policy (2009), available online at: <http://wgd.au.int/en/sites/default/files/Gender%20Policy%20-%20English.pdf> [accessed 5 August 2016], p 9.

⁵⁰ NATO Action Plan to Mainstream UNSCR 1325 into NATO-led Operations and Missions, Doc. PO(2010)0162, 17 November 2010; The Dakar Declaration : ECOWAS Plan of Action for the Implementation of United Nations Security Council Resolutions 1325 and 1820 in West Africa, September 2010, available online at: http://www.iansa-women.org/sites/default/files/newsviews/ecowas_outcome_document_1325.pdf; Pacific Regional Action Plan: Women, Peace and Security, 2012-2015, available online at: <http://www.forumsec.org/resources/uploads/attachments/documents/Pacific%20Regional%20Action%20Plan%20on%20Women%20Peace%20and%20Security%20Final%20and%20Approved.pdf> [both accessed 5 August 2016].

⁵¹ A similar argument is made in Christine Chinkin, “Gender, Human Rights, and Peace Agreements”, 18(3) *Ohio State Journal on Dispute Resolution* 867 (2006), p 871.

⁵² The important contributions of women are highlighted in Naomi R. Cahn, “Women in Post-Conflict Reconstruction: Dilemmas and Directions”, 12 *William and Mary Journal of Women and the Law* 335 (2006), p 344.

⁵³ Christine Chinkin, “Gender, Human Rights, and Peace Agreements”, 18(3) *Ohio State Journal on Dispute Resolution* 867 (2006), p 873.

networks and operate them throughout the duration of the conflict. Such movements often start as humanitarian and practical, for example, trying to find shared means of acquiring food and water or creating informal schooling programmes. But there have also been political initiatives such as forming groups to demand information about their disappeared male relatives. During conflict women also occupy positions and take on roles that had previously been filled by men who are now absent.⁵⁴ Thereby women have unique knowledge of local conditions and experiences, which can lead to a better solution for the post-conflict context.

Third, if women are only nominally present in the public arena during processes directed at stabilising their countries these processes have a smaller chance of success. Significant empirical evidence suggests that including women in the peace-making process will promote broader stability.⁵⁵

Of course, there are also the legal principles of gender equality and non-discrimination, which demand that women participate equally in all aspects of public life. Several articles of CEDAW are relevant in that respect. Article 3 requires that states take “all appropriate measures” to ensure the advancement of women, “in particular in the political, social, economic and cultural fields”, to ensure that they can fully enjoy their human rights. Article 4 clarifies that in order to “accelerat[e] de facto equality”, temporary measures can be taken, which will not be considered discrimination and which have to be “discontinued when the objectives of equality of opportunity and treatment have been achieved”. Article 7 obliges states to ensure that women are not discriminated against in the “political and public life of the country” and that they have the same rights as men:

- “ (a) To ... be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.”

Article 8 finishes off by requiring member-states “to ensure to women, on equal terms with men, and, without any discrimination, the opportunity to represent their Governments at the international level”.⁵⁶ Failure to include women in policy and decision-making about state and institution-building violates commitments under CEDAW and other human rights instruments.

Involvement of women in all stages of the peace process is also one of the main aims of the aforementioned UN gender mainstreaming policy. Security Council Resolution 1325 urges member states “to ensure increased representation of women at all decision-making levels in national, regional and international institutions”, calls on all actors involved to adopt measures that “involve women in all of the implementation mechanisms of the peace agreements”, and emphasises the importance of women’s participation in relation to the “constitution, the electoral system, the policy and the judiciary”.⁵⁷ A later Security Council resolution:

“Urges Member States, international and regional organisations to take further measures to improve women’s participation during all stages of peace processes, particularly in conflict resolution, post-conflict planning and peacebuilding, including by enhancing their engagement in political and economic decision-making at early stages of recovery processes, through inter alia promoting women’s leadership and capacity to engage in aid management and planning, supporting women’s organizations, and countering negative societal attitudes about women’s capacity to participate equally”.⁵⁸

Four years later in 2013, the Security Council expressed “its intent to employ, as appropriate, all means at its disposal to ensure women’s participation in all aspects of mediation, post-conflict recovery and peacebuilding”.⁵⁹ The gender mainstreaming policy tries to involve women already from the first stages of the peace-making process. Security Council Resolution 1888 urges “Secretary General, Member States and the heads of regional organizations to take measures to increase the representation of women in mediation processes and decision-making processes with regard to conflict resolution and peacebuilding”.⁶⁰ And Resolution 1889, amongst other resolutions, emphasises the “need to improve the participation of women in political and economic decision-making from the earliest stages of the peacebuilding process”.⁶¹

⁵⁴ *Ibid.*

⁵⁵ This point is made in Dina Francesca Haynes et al, “Women in the Post-Conflict Process: Reviewing the Impact of Recent U.N. Actions in Achieving Gender Centrality”, 11 *Santa Clara Journal of International Law* 189 (2012), p 196.

⁵⁶ Articles 3-4, 7-8, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, 1249 UNTS. 13, 19 ILM. 33, 38 (1980).

⁵⁷ Paras 1 and 8, SC Res. 1325 (2000), 31 October 2000.

⁵⁸ Para 1, SC Res. 1889 (2009), 5 October 2009.

⁵⁹ Para 5, SC Res. 2106 (2013), 24 June 2013.

⁶⁰ Para 16, SC Res. 1888 (2009), 30 September 2009.

⁶¹ Para 15, SC Res. 1889 (2009), 5 October 2009.

Despite the potential for a positive contribution and the aforementioned legal rules, women often have no direct access to the mediator or the official mediation and negotiation teams. A 2012 UN Women review identified that, out of 31 major peace processes conducted between 1992 and 2011:

- 4% of signatories of peace agreements were women;
- 2.4% of chief mediators were women;
- 3.7% of witnesses to peace negotiations were women;
- 9% of negotiation team members were women.⁶²

Involving women in official peace negotiations remains one of the areas that has shown the least progress.⁶³ Though the situation does seem to be improving, as the Secretary-General, in his 2014 Report on Women and Peace and Security, states that “Significant progress has been made with regard to the participation of women in conflict resolution, mediation and peace processes, in particular since 2010, including the appointment of a growing number of women as mediators and envoys, as members of mediation support teams and to the delegations of negotiating parties”.⁶⁴

Commitment to gender mainstreaming requires the identification of the obstacles to women’s participation and finding ways to remove such hurdles.⁶⁵ The next section will look at how the involvement of women in the various stages of peacebuilding has taken place in practice, by studying the broad range of peace agreements and the provisions regarding this issue that have been included in the agreements.

Principal Approaches of Involving Women

As was mentioned above, one of the more problematic areas is ensuring the involvement of women in peace negotiations. Not many peace agreements have provisions mandating this. Part of the reason for it is that there may not be a peace agreement at this stage and the negotiating teams are assembled through informal agreements. Nevertheless, there are a few agreements that address the participation of women in peace negotiations. For example, the *Agreement Implementing Governance Transition in Yemen*, which established a Council for National Dialogue (responsible for the development of the transitional roadmap), mandated that “Women will be represented in all delegations”.⁶⁶ An example of the involvement of women in peace negotiations without the existence of a peace agreement requiring this is provided by the Liberian peace process. In 2003, the Women in Peacebuilding Network supported the groundbreaking participation of women in the Liberian peace process. The Network funded a delegation of women to travel to Sierra Leone, where they organised meetings between then-President Charles Taylor and rebel leaders. Later, they led the Women of Liberia Mass Action for Peace Campaign to confront rebel leaders and spur progress in the area of disarmament.⁶⁷

The same considerations that make the participation of women in peace processes important are also relevant in national dialogue processes and, accordingly, it is as important to include women in such processes. The *Agreement Implementing Governance Transition in Yemen* did just that by stating that the comprehensive Conference for National Dialogue (taking place as part of the transitional process) would involve:

“forces and political actors, including youth, the Southern Movement, the Houthis, other political parties, civil society representatives and women. Women must be represented in all participating groups”.⁶⁸

A similar approach is taken in the Juba Declaration on Dialogue and National Consensus, which acknowledges that “the process of forging national consensus requires open dialogue without prior conditions or exclusion of any party”, and states that “There is need to continue this free democratic dialogue among all national forces, civil society and women organizations”.⁶⁹

⁶² Also, one should bear in mind that the 2011 Oslo negotiations regarding the Philippines, with 33% of female signatories and 35% of women on delegations, represent a stand-out high point without which the average number of women in that period drops to 3% of signatories and 7.5% of negotiators: UN Women, “Women’s Participation in Peace Negotiations: Connections between Presence and Influence”, available online at: <http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2012/10/wpssourcebook-03a-womenpeace negotiations-en.pdf> [accessed 5 August 2016], p 3.

⁶³ Along with including women in peacekeeping operations. See further in Barbara Miller et al, “Women in Peace and Security through United Nations Security Resolution 1325: Literature Review, Content Analysis of National Action Plans, and Implementation”, May 2014, available online at: http://www.peacewomen.org/assets/file/NationalActionPlans/miladpournikanalysisdocs/igis_womeninpeaceandsecuritythroughunsr1325_millerpournikswaine_2014.pdf [accessed 5 August 2016], p 47.

⁶⁴ Report of the Secretary-General on Women and Peace and Security, UN Doc. S/2014/693, 23 September 2014, p 9. The same report highlights that “In 2013, the United Nations led or co-led 11 formal mediation processes. As in 2012, all United Nations mediation support teams included women, an increase from 86 per cent in 2011. ... Seven processes (88 per cent) held regular consultations with women’s civil society organizations in 2013, compared with 100 per cent in 2012 and 50 per cent in 2011” [p 11].

⁶⁵ Christine Chinkin, “Gender, Human Rights, and Peace Agreements”, 18(3) *Ohio State Journal on Dispute Resolution* 867 (2006), p 871.

⁶⁶ Paras 8, 9, *Agreement Implementing Governance Transition in Yemen*, July 2011.

⁶⁷ *Women and Peace and Security*, Report of the Secretary-General, UN Doc. S/2010/498, 28 September 2010, para 15.

⁶⁸ Part IV, para 20, *ibid*.

⁶⁹ Para 1.1, *Juba Declaration on Dialogue and National Consensus*, 30 September 2009 (Sudan).

Moving on from the stage of negotiations to the post-conflict phase, it becomes important to ensure the participation of women in all aspects of public life. There is a variety of ways of doing this. The options include affirmations of the right to participate, references to ensuring participation, provisions about participation in various institutions and organs, and including quotas regarding the number of women in a given entity. These methods should ideally be used simultaneously, in a complementary manner.

The option of confirming women's right to participate has been used in the *Good Friday Agreement*, where the parties affirmed "their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community" and emphasised "the right of women to full and equal political participation".⁷⁰ The post-conflict Iraqi constitution adopted a similar approach by stating:

"Citizens, male and female, have the right to *participate in public matters* and enjoy political rights, including the right to vote and run as candidates."⁷¹

A variation is offered by the approach of acknowledging the relevance of participation, without an explicit reference to its nature as a legal right. This was done in the *Agreement on a Firm and Lasting Peace* in Guatemala, where the parties recognised that the "genuine participation of citizens - both men and *women* - from all sectors of society is essential for achieving social justice and economic growth" and agreed that the "State must broaden these opportunities for participation".⁷² A comparable was included in the *Dar-Es-Salaam Declaration*, where it was agreed to "Promote effective participation of the different socioeconomic actors, specifically the private sector, civil society, *women* and youth in the consolidation of democracy and good governance".⁷³

The inclusion of a general equality clause within the peace agreement or a post-conflict constitution on its own is unlikely to be sufficient to ensure gender balance in the political and legal positions of the post-conflict governance system. Specification within the international agreement of the inclusion of women within relevant national structures at least provides a binding commitment to reach this goal.⁷⁴ Accordingly, an option that has been widely used in addressing the participation of women is including a provision about representation of women in a specific context or in a particular institution or organisation.

The first type of provision does not specify which exact institutions it is addressing. Examples are the *Agreement on the Implementation Mechanism for the Transition Process in Yemen*, which states that "Women shall appropriately represented in all of the institutions referred to in this Mechanism",⁷⁵ and the *Doha Document for Peace in Darfur*, in which the parties agree to address the under-representation of women in government institutions and decision-making structures". The latter agreement continues by declaring that "special measures shall be taken and implemented, [...], in order to ensure women's equal and effective participation in decision-making at all levels of government in Darfur". One of those measures is laid down in a later article, which provides that certain posts in the national civil service are reserved "exclusively for qualified women from Darfur".⁷⁶

The second type of provision that can be utilised provides that women need to be represented in a specific body. This has been done in relation to the government, the legislature, the judiciary, the police force, the military, regional government structures, and various committees set up for specific purposes. Often specific quotas are used to ensure that there is sufficient involvement of women; other times an obligation of including representation of women is incorporated, without specifying how many women should be included for that obligation to be fulfilled.

As mentioned above, CEDAW lays down an obligation to ensure to women the right "to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government".⁷⁷ This obligation has contributed to the prevalence of provisions regarding participation of women in all the branches of government. Firstly, there are peace agreements that mandate the inclusion of women in the legislature. The *Liberian Peace Agreement* established a National Transitional Legislative Assembly in Liberia, composed of a maximum of seventy six members, which had to come from the following entities: the existing government of Liberia (12 seats), the LURD (12 seats), MODEL (12 seats), the relevant political parties (18 seats), civil society and interest groups (7 seats) including the National Bar Association, the Liberian business organisations, women's organisations, trade unions, teachers union, refugees,

⁷⁰ Provision titled "Human Rights", para 1, Agreement Reached in the Multi-party Negotiations (The Northern Ireland Peace Agreement, The Good Friday Agreement), 10 April 1998.

⁷¹ Article 20, Constitution of Iraq, 15 October 2005 [emphasis added].

⁷² Section I, para 7, Agreement on a Firm and Lasting Peace, 29 December 1996 (Guatemala, URNG) [emphasis added].

⁷³ Para 33, Dar-Es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 19-20 November 2004 (Angola, Burundi, Central African Republic, Congo, DRC, Kenya, Rwanda, Sudan, Tanzania, Uganda, Zambia) [emphasis added].

⁷⁴ Christine Chinkin, "Gender, Human Rights, and Peace Agreements", 18(3) *Ohio State Journal on Dispute Resolution* 867 (2006), p 883.

⁷⁵ Part VI, para 26, Agreement on the Implementation Mechanism for the Transition Process in Yemen in Accordance with the Initiative of the Gulf Cooperation Council, 5 December 2011.

⁷⁶ Article 2, para 34; Article 7, para 54, Doha Document for Peace in Darfur, 31 May 2011 (Sudan).

⁷⁷ Article 7(b), CEDAW, *supra* note

the Liberians in the Diaspora/America and the youth, and the counties (15 seats).⁷⁸ It is clear that the 7 seats provided for all the interest groups are not enough to ensure that a sufficient number of women will be included in the Legislative Assembly. A comparatively more generous quota is included in the post-conflict Iraqi constitution, which states that “A proportion of no less than 25 percent of the seats in the Council of Representatives is specified for the participation of women.”⁷⁹

The *Bougainville Peace Agreement* reflects a different approach. It provides that the legislature would be a “mainly elected body”, but that it can also include members appointed or elected to represent special interests, such as *women*, youth, and churches.⁸⁰ One could argue that appointing members, instead of the general public electing them, is not in accordance with relevant human rights norms (the same could be asserted about using quotas). But positive measures are allowed to facilitate the process of attaining equal rights. As mentioned above, CEDAW Article 4 clarifies that for “accelerating de facto equality”, temporary measures can be taken, which will not be considered discrimination and which have to be “discontinued when the objectives of equality of opportunity and treatment have been achieved”.

An indirect way to try to ensure the representation of women in the legislature is to provide for gender quotas in the electoral lists of the political parties (assuming that at least some of the women would end up being elected). Article 25 of the ICCPR provides that every citizen has the right “to be elected at genuine periodic elections”. CEDAW reaffirms this in Article 7 by stating that state parties need to ensure to women the right to “be eligible for election to all publicly elected bodies”.

In the *Agreement among Lesotho Political Parties regarding the Electoral Law Bill*, the parties agreed to include a gender quota on the party lists.⁸¹ The *Arusha Agreement* revised the existing electoral system for the National Assembly and, among other changes, prescribed that electoral lists would be “multi-ethnic in character and reflect gender representation”. It clarified by adding that “For each three names in sequence on a list, only two may belong to the same ethnic group, and for each five names at least one shall be a woman”.⁸² In Nepal, it was agreed that the political parties, while deciding on their lists of candidates, have to “ensure proportional representation of disadvantaged communities and regions, Madheshis (the Terai communities), women, low-caste groups and other communities”.⁸³

Secondly, it is as important to ensure that women gain access to government positions. The *Agreement on Resolving the Challenges Facing Zimbabwe*, in a section addressing the framework for a new government, acknowledged “the need for gender parity, particularly the need to appoint women to strategic Cabinet posts”.⁸⁴ In the *Liberian Peace Agreement*, the parties agreed to “reflect national and gender balance in all elective and non-elective appointments within the NTGL [the National Transitional Government of Liberia]”.⁸⁵ The *Agreement on Provisional Arrangements in Afghanistan* provided that the members of the interim administration would be selected “on the basis of professional competence and personal integrity”, but “with due regard to the ethnic, geographic and religious composition of Afghanistan and to the importance of the participation of women”. It then specified that the interim bodies need to ensure the participation of women in the subsequent Interim Administration.⁸⁶

Other agreements provide for gender quotas in regional government bodies. The *Chittagong Hill Tracts Peace Accord* lays down the requirement that there need to be three seats for women in every Hill District Council and specifies that one third of those seats are reserved for non-tribal women. Another body, the Regional Council, is formed of twenty-two members, with the following composition:

“Chairman - 1
Members tribal (men) - 12
Members tribal (women) - 2
Members non-tribal (men) - 6
Members non tribal (women) - 1”⁸⁷

⁷⁸ Article XXIV, Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL) and the Political Parties, 18 August 2003.

⁷⁹ Article 151, Constitution of Iraq, 15 October 2005.

⁸⁰ Section 4, para 28; Bougainville Peace Agreement, 30 August 2001 (PNG Government, Bougainville Interim Provincial Government, MPs for areas of Bougainville, Leitana Council of Elders, Bougainville People’s Congress, Bougainville Resistance Forces, Bougainville Revolutionary Army) [emphasis added].

⁸¹ Paras 12-13, Agreement among Lesotho Political Parties regarding the Electoral Law Bill, 9 March 2011.

⁸² Protocol II, Article 20, para 8, Arusha Peace and Reconciliation Agreement for Burundi & Annexes, 28 August 2000 (Government + internal actors).

⁸³ Section III, para 9(c), Unofficial Translation of the Decisions of the Summit Meeting of the Seven-Party Alliance and the Communist Party of Nepal (Maoist), 8 November 2006 (Nepal).

⁸⁴ Article 20, Agreement between the Zimbabwe African national Union-Patriotic Front (ZANU-PF) and the Two Movement for Democratic Change (MDC) Formations, on Resolving the Challenges Facing Zimbabwe, 15 September 2008.

⁸⁵ Article XXVIII, Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL) and the Political Parties, 18 August 2003.

⁸⁶ Section III, para A(3); Section V, para 4, Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions, 14 November 2001 (participants in the UN Talks on Afghanistan). As another example, the Arusha Agreement provided that the government will “take into account the need to reflect ethnic, religious, political, and gender balance in its decisions and appointments” – Protocol II, Article 15, Arusha Peace and Reconciliation Agreement for Burundi & Annexes, 28 August 2000 (Government + internal actors).

⁸⁷ Paras B(4)(a), C(3)(4), Chittagong Hill Tracts Peace Accord, 2 December 1997.

A similar division is included in the *Memorandum of Settlement on Bodoland Territorial Council*, which provided that the Council would have forty six members, “out of which 30 will be reserved for Scheduled Tribes, 5 for non-tribal communities, 5 open for all communities and 6 to be nominated by Governor of Assam from the unrepresented communities for BTC area of which at least two should be women”.⁸⁸

Thirdly, representation of women also needs to be ensured in the judicial branch of government. One option is to include an obligation to include women in the nomination stage. The Liberian *Peace Agreement* does this by providing that nominations for all new judicial appointments “shall be based on a shortlist of candidates for each position recommended by the National Bar Association, including the female lawyers”.⁸⁹ Another option is to provide for reform of the judicial sector. The *Arusha Agreement* states that the transitional government has to reform the judicial machinery at all levels to promote gender (and ethnic) balance in the Burundian judicial sector through recruitment and appointments, creating training colleges for employees of the judicial system, promoting accelerated training, and improving the status and the internal promotion of magistrates.⁹⁰

Law enforcement is another crucial area, where women need to participate, to assist in removing biases against women in that context and ensuring that women have an option to approach female officers with more sensitive information about crimes that have been committed against them. Several peace agreements have provisions that proclaim that recruiting more women into the police service is a priority. For example, this was done in the *Framework on Police Restructuring*, the *Chapultepec Peace Agreement*⁹¹, and the *Arusha Agreement*⁹². The first contains the following paragraph:

“Acknowledging the present under-representation of women in the Republika Srpska police force, we agree to undertake measures to increase the training and hiring of women officers. We agree to step up active recruitment of women candidates into the Republika Srpska Police Academy”.⁹³

An alternative is to deal with both the police and the military together. The *Arusha Agreement*, in Article 14 of Protocol III, deals with the composition of the defence and security forces and states that both the national defence force and the national police will be composed of all components of the Burundian nation, who wish to form part of those bodies, irrespective of ethnic, regional, gender and social status.⁹⁴ A later article clarifies that the correction of the imbalances will be “approached progressively” and that this correction will be “achieved during the transition period” by opposition combatants into the current defence and security forces and by recruiting other Burundian citizens.⁹⁵

To ensure that women are integrated into all aspects of public life, women have to be included in as many institutions and public entities as possible, in order to provide a positive example to the private sector, which would hopefully follow lead. Accordingly, it is often necessary to ensure that references to the representation of women are included in peace agreement articles that establish new committees or other such bodies. The more important the function of the entity, the more crucial it is to include women in its functioning. The Liberian *Peace Agreement*, for example, established a Governance Reform Commission, with the tasks of developing public sector management reforms, ensuring transparency and accountability in all government institutions and activities, and encouraging the practice of good governance in Liberia (among other aims). The Commission had seven permanent members and it was required to have women amongst its membership. It was also specified that the committee members had to be “men and women of known integrity with national and/or international experience”.⁹⁶

Another important area is post-conflict reconciliation. To ensure that transitional justice bodies are seen to represent all sides, it is vital to include persons from a wide range of backgrounds in such bodies, and, as importantly, women must play a role in such entities. This has been acknowledged in Kenya, with regard to the Truth, Justice and Reconciliation Commission that was established with the following specification:

“The Commission will consist of seven members, with gender balance taken into account. Three of the members shall be international. The members shall be persons of high moral integrity, well regarded by the Kenyan population,

⁸⁸ Para 4.2, Memorandum of Settlement on Bodoland Territorial Council (BTC), 10 February 2003 (Government of India, National Socialist Council of Nagaland-Isak Muivah(NSCN-IM)).

⁸⁹ Article XXVII, para 3, Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL) and the Political Parties, 18 August 2003.

⁹⁰ Protocol I, Article 7, para 18(b); Protocol II, Article 17, para 3, Arusha Peace and Reconciliation Agreement for Burundi & Annexes, 28 August 2000 (Government + internal actors).

⁹¹ Para 7(D)(b), Peace Agreement, 16 January 1992 (“The Chapultepec Peace Agreement”; El Salvador, FMLN).

⁹² Protocol III, Article 14, Arusha Peace and Reconciliation Agreement for Burundi & Annexes, 28 August 2000 (Government + internal actors).

⁹³ Para 14, Framework on Police Restructuring Agreement, Reform and Democratization in the Republika Srpska, 9 December 1998 (Republika Srpska, UN Mission in Bosnia and Herzegovina).

⁹⁴ Protocol III, Article 14, Arusha Peace and Reconciliation Agreement for Burundi & Annexes, 28 August 2000 (Government + internal actors).

⁹⁵ *Ibid*, Article 16.

⁹⁶ Article XVI, paras 2-3, Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL) and the Political Parties, 18 August 2003.

and shall include a range of skills, backgrounds, and professional expertise. As a whole, the Commission shall be perceived as impartial in its collectivity, and no member should be seen to represent a specific political group”.⁹⁷

Peace agreements often establish implementation bodies to ensure the full and proper implementation of the agreement in question. Again, women should be involved in such bodies, as they need to be engaged in all stages of the peacemaking process and implementation is often the most crucial stage in this process. Whether any actual changes are accomplished with the peace agreement depends on how successful the implementation of the agreement is. The *Agreement on Resolving the Challenges Facing Zimbabwe* establishes one such implementation mechanism. It provides for the creation of a Joint Monitoring and Implementation Committee [JOMIC], which is composed of four senior members from each of the former parties to the conflict. The agreement dictates that “Gender consideration must be taken into account in relation to the composition of JOMIC”.⁹⁸

As mentioned above, there is a plethora of different committees that are set up or reformed in the post-conflict setting. The aim should be to involve women in as many of such bodies as possible, regardless of the entity’s area of activity. Other examples of types of committees that have been addressed in peace agreements in relation to the participation of women are electoral commissions⁹⁹, preparatory committees¹⁰⁰, committees of experts¹⁰¹, various management bodies¹⁰², and thematic councils.¹⁰³

One criticism of the utilisation of quotas is that the issue of participation of women in peace processes is then reduced to the simple addition of women or a woman with no ties or credentials in either peace-making or women’s rights movements. It can become a matter of ticking the box, rather than considering the qualitative issues.¹⁰⁴ Women elected through a quota system may not have “women’s interests” at the forefront of their thinking and policy-making. Nevertheless, commentary about Afghanistan indicates that even in that very challenging socio-political environment, women’s quotas can result in great gain for women. At the very least, having more women in political positions provides a role model effect for young girls and will likely have a marked impact on promoting women’s views in politics in the future.¹⁰⁵

Some categories of women can require additional protection. Often the position of rural women, indigenous women or female refugees is worse than that of the general female population. Such groups can face with additional problems, which should be addressed to mitigate the hardship that these women have to grapple with. The *Guatemala Agreement on Identity and Rights of Indigenous Peoples* recognised “that indigenous women are particularly vulnerable and helpless, being confronted with twofold discrimination both as women and indigenous people, and also having to deal with a social situation characterized by intense poverty and exploitation”. In view of that, the Government agreed to take measures such as establishing an Office for the Defence of Indigenous Women’s Rights (with the participation of such women), including legal advice services and social services; and eliminating discrimination against indigenous women with regard to “facilitating access to land, housing, loans and participation in development projects”.¹⁰⁶

When tackling the issue of participation of women in all aspects of the public life, it is important to ensure follow-up and implementation of the provisions that were incorporated to ensure representation of women. Often times women need to be trained to enable them to take up public positions and to pre-empt any arguments that they are inadequately prepared and unsuitable.¹⁰⁷ But not many peace agreements include such preparatory requirements. An agreement that is unique with respect to implementation is the *Guatemala Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements*. It has provisions promoting the “convening of a women’s forum on the commitments concerning women’s rights and participation set out in the Peace Agreements”. It requires follow up of the “commitments concerning women set out in the Peace Agreements” and calls for evaluation of “the progress made in women’s participation”. More importantly, it also

⁹⁷ Paragraph on “Selection and Composition”, Kenyan National Dialogue and Reconciliation, Truth, Justice and Reconciliation Commission, 4 March 2008 (PNU, ODM) [emphasis added].

⁹⁸ Article XXII, para 22, Agreement between the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and the Two Movement for Democratic Change (MDC) Formations, on Resolving the Challenges Facing Zimbabwe, 15 September 2008.

⁹⁹ Article 18, Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (“Abidjan Accord”), 30 November 1996.

¹⁰⁰ Para 76, Dar-Es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 19-20 November 2004 (Angola, Burundi, Central African Republic, Congo, DRC, Kenya, Rwanda, Sudan, Tanzania, Uganda, Zambia).

¹⁰¹ Part II, paras 6 and 9, The Constitution of Kenya Review Bill, 19 June 2008.

¹⁰² Chapter II, para 2.5, Protocol I, Article 8, Arusha Peace and Reconciliation Agreement for Burundi & Annexes, 28 August 2000 (Government + internal actors).

¹⁰³ Section II, para E(22), Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements, 29 December 1996 (Guatemala, URNG).

¹⁰⁴ International Civil Society Action Network and MIT Center for International Studies, “What the Women Say: Participation and UNSCR 1325. A Case Study Assessment”, October 2010, available online at: http://web.mit.edu/cis/pdf/WomenReport_10_2010.pdf [accessed 1 August 2016], p 15.

¹⁰⁵ Barbara Miller *et al*, “Women in Peace and Security through United Nations Security Resolution 1325: Literature Review, Content Analysis of National Action Plans, and Implementation”, May 2014, available online at: http://www.peacewomen.org/assets/file/NationalActionPlans/miladpournikanalysisdocs/igis_womeninpeaceandsecuritythroughunscr1325_millerpournikswaine_2014.pdf [accessed 5 August 2016], p 5.

¹⁰⁶ Section II, para B(1); Section IV, para F(9), Agreement on Identity and Rights of Indigenous Peoples, 31 March 1995 (Guatemala, URNG).

¹⁰⁷ This aspect is emphasised in Christine Chinkin, “Gender, Human Rights, and Peace Agreements”, 18(3) *Ohio State Journal on Dispute Resolution* 867 (2006), p 883.

states that on the basis of this evaluation a “corresponding plan of action” should be drawn up.¹⁰⁸ Provisions like these need to be utilised more often as they help ensure that there are real practical improvements to the situation of women in post-conflict societies.

5. Protection

The second general issue area is the problem of violence towards women. In addition to suffering the same forms of violence as male civilians, female civilians are also the primary targets of gender-based violence. Such violence is an increasingly visible and acknowledged aspect of conflict.¹⁰⁹ The scale and scope of sexual violence against women in many contemporary conflicts are almost incomprehensible. One report notes:

“An estimated half a million women were raped during the 1994 genocide in Rwanda. A staggering 50% of all women in Sierra Leone were subjected to sexual violence, including rape, torture and sexual slavery, according to a 2002 report by Physicians for Human Rights. In Liberia, an estimated 40 percent of all girls and women have fallen victim to abuse. During the war in Bosnia-Herzegovina in the 1990s, between 20,000 and 50,000 women were raped.”¹¹⁰

Sex crimes are exceedingly commonplace during periods of conflict, with the crimes committed both opportunistically and purposefully, randomly and in a calculated manner, and by persons in control or those out of control.¹¹¹ Rape has come to be used as a war tactic against enemy civilian populations in order to terrorise and dehumanise them. It is used to establish the power of soldiers to take what they want, to punish anyone suspected of sympathising with another faction, and to humiliate individuals and communities.¹¹²

Sexual violence against women and girls affects them physically, psychologically, economically, and socially. The health impact ranges from unwanted pregnancies, miscarriages caused by the abuse, illness or death from illegal abortions, to sexually transmitted diseases, including HIV-AIDS. Sexual violence also has profound psychological consequences on its victims. Victims often experience insomnia, depression, post-traumatic stress disorder, and suicidal thoughts. All of these symptoms are exacerbated by the unavailability of appropriate health services and make the reintegration of women into post-conflict society all the more difficult. Many of these women are often frightened to report their rapes, fearing ostracism from their homes and communities.¹¹³ Post-conflict arrangements often make provisions for the reintegration of soldiers back into society, but not for that of rape victims and their return to normal life. Attention should be given to ways of addressing condemnation or ostracism of women who have suffered sexual abuse.¹¹⁴

Acts of sexual and gender-based violence violate a number of human rights principles. Acts of sexual and gender-based violence violate a number of human rights principles enshrined in international human rights instruments. Among others, these include: (a) the right to life, liberty and security of the person; (b) the right to the highest attainable standard of physical and mental health; and (c) the right to freedom from torture or cruel, inhuman, or degrading treatment or punishment. Several international instruments specifically address sexual and gender-based violence against women and girls – such as CEDAW, the UN Declaration on the Elimination of Violence against Women (1993), and the Beijing Declaration and Platform for Action (1995) – and reaffirm states’ responsibility to work to eliminate them.¹¹⁵ The Declaration on the Elimination of Violence Against Women defines gender-based violence broadly to include any gender-based act that causes physical, sexual, or psychological harm.¹¹⁶

During the past decade, sexual violence against women has begun to be recognised as a war crime, a crime against humanity, and an instrument of genocide. The first judgment issued by an international tribunal recognising rape as a war crime occurred in the monumental case against Jean-Paul Akayesu, a former mayor in Rwanda, by the International

¹⁰⁸ Paras, 29, 88, 178, Agreement on Identity and Rights of Indigenous Peoples, 31 March 1995 (Guatemala, URNG).

¹⁰⁹ Eve M. Grina, “Mainstreaming Gender in Rule of Law Initiatives in Post-Conflict Settings”, 17 *William and Mary Journal of Women and the Law* 435 (2010-2011), p. 448.

¹¹⁰ IRIN Web Special on violence against women and girls during and after conflict, “Our Bodies - Their Battle Ground: Gender-based Violence in Conflict Zones”, available online at: <http://www.irinnews.org/pdf/in-depth/gbv-irin-in-depth.pdf> [accessed 10 August 2016].

¹¹¹ Kelly D. Askin, “The Quest for Post-Conflict Gender Justice”, 41 *Columbia Journal of Transnational Law* 509 (2002-2003), p 509.

¹¹² Naomi R. Cahn, “Women in Post-Conflict Reconstruction: Dilemmas and Directions”, 12 *William and Mary Journal of Women and the Law* 335 (2006), pp 358-9.

¹¹³ *Ibid*, p 359.

¹¹⁴ Christine Chinkin, “Gender, Human Rights, and Peace Agreements”, 18(3) *Ohio State Journal on Dispute Resolution* 867 (2006), p 881.

¹¹⁵ See further, UN High Commissioner for Refugees, “Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response”, May 2003, available online at: <http://www.unhcr.org/3f696bcc4.html> [accessed 11 June 2016].

¹¹⁶ Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, art. 1, U.N. Doc. A/RES/48/104 (Dec. 20, 1993): “For the purposes of this Declaration, the term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

Criminal Tribunal for Rwanda (ICTR)¹¹⁷. In the *Akayesu* Judgment, the ICTR found that rape and gender-based violence may constitute genocide¹¹⁸ when “used as instruments of genocide”. The International Criminal Tribunal for the Former Yugoslavia (ICTY) placed emphasis on gender issues in the *Celebici* case. In that case, the ICTY held that sexual violence can be prosecuted as torture, finding that such violence involves an element of gender discrimination because men and women are often tortured differently based on their sex, as in the case of rape. Thus, sexual violence often satisfies the “purpose” element of torture.¹¹⁹ The ICTY has also held that rape involving a single victim can constitute a serious violation of international law.¹²⁰

Addressing gender-based violence is also one of the main aims of the UN gender mainstreaming policy. Security Council Resolution 1325 (2000) emphasises states’ responsibility to end impunity for crimes against humanity and war crimes, including sexual and other forms of violence against women and girls. It also calls on “all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict”.¹²¹ Resolution 1820 (2008) demands the cessation of sexual violence against civilians and “that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence”.¹²² Resolution 1960 requires a monitoring and reporting framework to be set up to track sexual violence in conflict.¹²³ And Resolution 2106 (2013) emphasises “the important role that can be played by women, civil society, including women’s organizations, and formal and informal community leaders in exerting influence over parties to armed conflict with respect to addressing sexual violence”.¹²⁴ Summing up, both international human rights norms and Security Council resolutions demand that gender-based violence be addressed in the post-conflict context.

Addressing Violence towards Women

Often the first step to solving a problem is acknowledging its existence. The same is true in the context of violence towards women. This was done in the Lomé Agreement, which recognised that “women have been particularly victimized during the war”, before moving on to state that therefore special attention should be accorded to their needs and potential in formulating and implementing post-conflict programmes.¹²⁵

Once it has been acknowledged that there are victims of (sexual) violence, action needs to be taken to offer support and stop the violations from occurring. Security Council Resolution 1820 requires all parties concerned to develop and strengthen “the capacities of national institutions, in particular of judicial and health systems, and of local civil society networks in order to provide sustainable assistance to victims of sexual violence in armed conflict and post-conflict situations”.¹²⁶ Support can take various forms. The Dar-Es-Salaam Declaration sets up:

“regional mechanisms, including relevant traditional support mechanisms, aimed at providing psychosocial support, medical and legal assistance to women and girls who are victims of rape as well as other acts of sexual violence and exploitation”.¹²⁷

The *Arusha Agreement* provides for “Counselling, training and assistance with reintegration” to girls and women who have been “subjected to sexual abuse and forced marriages during and after the crisis”.¹²⁸

Of course, it is crucial to stop future gender-based violence. Security Council Resolution 1820 (2008) also “Demands

¹¹⁷ For a more detailed consideration, see Naomi R. Cahn, “Women in Post-Conflict Reconstruction: Dilemmas and Directions”, 12 *William and Mary Journal of Women and the Law* 335 (2006), p 362-3.

¹¹⁸ Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment (Sept. 2, 1998), para. 731.

¹¹⁹ Prosecutor v. Delalic, Case No. IT-96-21-T, Judgment (Int’l Crim. Trib. for the Former Yugoslavia, Nov. 16, 1998), para. 941.

¹²⁰ Eve M. Grina, “Mainstreaming Gender in Rule of Law Initiatives in Post-Conflict Settings”, 17 *William and Mary Journal of Women and the Law* 435 (2010-2011), p. 449.

¹²¹ SC Res. 1325 (2000), 31 October 2000, paras 10-11.

¹²² SC Res. 1820 (2008), 19 June 2008, paras 2-3.

¹²³ See further on relevant SC resolutions in Dina Francesca Haynes et al, “Women in the Post-Conflict Process: Reviewing the Impact of Recent U.N. Actions in Achieving Gender Centrality”, 11 *Santa Clara Journal of International Law* 189 (2012), p 198.

¹²⁴ SC Res. 2106 (2013), 24 June 2013, para 11.

¹²⁵ Para 2, The Lomé Agreement, Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, 7 July 1999, Article XXVIII, Post-war Rehabilitation and Reconstruction.

¹²⁶ SC Res. 1820 (2008), 19 June 2008, para 13.

¹²⁷ Para 67, Dar-Es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 19-20 November 2004 (Angola, Burundi, Central African Republic, Congo, DRC, Kenya, Rwanda, Sudan, Tanzania, Uganda, Zambia).

¹²⁸ SChapter II, para 2.5, Arusha Peace and Reconciliation Agreement for Burundi & Annexes, 28 August 2000 (Government + internal actors).

the immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians with immediate effect”.¹²⁹ Accordingly, various peace agreements contain provisions that emphasise that the ceasefire involves the cessation of sexual violence. The *Nepal Agreement on Monitoring of the Management of Arms and Armies* mandates the parties to “scrupulously refrain” from “All acts and forms of gender-based violence” as part of upholding the ceasefire.¹³⁰ The 2006 Burundi Comprehensive Ceasefire Agreement clarifies that the ceasefire includes the “Cessation of all acts of violence against the civilian population, including sexual violence”.¹³¹

According to the Declaration on the Elimination of Violence Against Women, states should take concrete action to investigate and punish violence against women, regardless of whether the violence occurs in the public or private sphere. States should also develop comprehensive “preventive approaches,” including targeting social attitudes through education initiatives.¹³² The prevention aspect is highlighted in the Arusha Agreement, which lays down the obligation of:

“Prevention, suppression and eradication of acts of genocide, war crimes and other crimes against humanity, as well as violations of human rights, including those which are gender based”.¹³³

As another example, in the *Nepal Comprehensive Peace Accord* both parties “fully agree to provide special protection to the rights of women and children, to immediately stop all types of violence against women and children, including child labor, as well as sexual exploitation and abuse”.¹³⁴

It is also necessary to implement changes to the legislation to ensure that gender-based violence is prohibited and that violations would be punished appropriately. This is emphasised in Security Council Resolution 1888 (2009), which urges states to “undertake comprehensive legal and judicial reforms, as appropriate, in conformity with international law, without delay and with a view to bringing perpetrators of sexual violence in conflicts to justice and to ensuring that survivors have access to justice, are treated with dignity throughout the justice process and are protected and receive redress for their suffering”.¹³⁵ The *Pact on Security, Stability and Development in the Great Lakes Region* obliges the member states to “undertake, in accordance with the Protocol on the Prevention and Suppression of Violence Against Women and Children, to combat sexual violence against women and children through preventing, criminalizing and punishing acts of sexual violence, both in times of peace and in times of war, in accordance with national laws and international criminal law”.¹³⁶ In Guatemala, a couple of agreements specified that sexual harassment has to be classified as a criminal offence.¹³⁷

Depending on the circumstances of the conflict, including provisions about the prohibition of sex trade can also be necessary. CEDAW Article 6 states that all appropriate measures, including legislation, have to be taken “to suppress all forms of traffic in women and exploitation of prostitution of women”. A provision with such content was included in the post-conflict constitution of Iraq, which laid down that “the trading in women or children or the sex trade” if forbidden.¹³⁸

6. Advancement

Gender Equality & Non-Discrimination

The third group of provisions that can be found in peace agreements regarding women deals with the advancement of women. Often the principle of gender equality means that action has to be taken to ensure that women benefit from the same rights and benefits as men. The international legal framework governing gender equality is clear: states must provide citizens with equal rights and protections regardless of their sex. In practice, however, many states fail to fulfil

¹²⁹ SC Res. 1820 (2008), 19 June 2008, para 2.

¹³⁰ Para 5.1, Agreement on Monitoring of the Management of Arms and Armies, 8 December 2006 (Nepalese government, CPN[Maoist]).

¹³¹ Article 2; Annexure 1, para 4, Comprehensive Ceasefire Agreement between the Government of the Republic of Burundi and the Palipehutu-FNL, 7 September 2006 (Government, Palipehutu-FNL). Similar provisions are included in Article II, Ceasefire Agreement between the Transitional Government of Burundi and the Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie, 2 December 2002 (Government + National Council for the Defence of Democracy = CNDD-FDD), along with Joint Communiqué of the Nineteenth Regional Summit on Burundi, Arusha, 1-2 December 2002 (Uganda, Tanzania, South Africa, AU, Ethiopia, Zambia, Gabon, Kenya, DRC); and Protocol III, Article 25, Arusha Peace and Reconciliation Agreement for Burundi & Annexes, 28 August 2000 (Government + internal actors).

¹³² Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, art. 1, U.N. Doc. A/RES/48/104, 20 December 1993, Article 4.

¹³³ Protocol I, Article 6, Arusha Peace and Reconciliation Agreement for Burundi & Annexes, 28 August 2000 (Government + internal actors).

¹³⁴ Para 7.6, Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist), 22 November 2006.

¹³⁵ SC Res. 1888 (2009), 30 September 2009, para 6.

¹³⁶ Article 11, Pact on Security, Stability and Development in the Great Lakes Region, 14-15 December 2006 (Angola, Burundi, CAR, DRC, Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda).

¹³⁷ Section II, para B(1), Agreement on Identity and Rights of Indigenous Peoples, 31 March 1995 (Guatemala, URNG; Para 177, Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements, 29 December 1996 (Guatemala, URNG).

¹³⁸ Article 35, Constitution of Iraq, 15 October 2005.

their international obligations.¹³⁹ A 2002 report by the United Nations entitled *Women, Peace and Security*, noted that “Discrimination against women and girls and gender inequalities can persist or deepen during the period after conflict, thereby limiting the opportunities of women and girls to play a significant part in the design and implementation of the peace and reconciliation process”.¹⁴⁰ Accordingly, it is important to tackle such issues during the peace-making process. The conflict resolution context provides an opportunity to address deficiencies in gender equality. The complexity and range of peace processes makes it impossible to provide a template for addressing gender equality in all different circumstances; therefore, the following sections will highlight some of the recurrent issues and demonstrate ways in which they have been tackled.

The UN Declaration on Human Rights, in Article 1 declares that “All human beings are born free and equal in dignity and rights”. Subsequent articles provide that everyone is “entitled without any discrimination to equal protection of the law” and prohibit making a “distinction of any kind, such as race, colour, sex, language, religion [...]” in the application of the Declaration.¹⁴¹ The ICCPR has similar provisions, and CEDAW mandates that state parties “embody the principle of the equality of men and women” in all appropriate legislation.¹⁴²

The first option that has been used in peace agreements to address the issue of gender equality and non-discrimination is the inclusion of an obligation to become a party to the main international agreements setting out equal rights and protection of women. This has been done in practice principally in relation to CEDAW.¹⁴³ An example of a longer list of agreements can be found in the *Contadora Act on Peace and Co-Operation in Central America*, where the parties are obliged:

“To set in motion the constitutional procedures necessary for them to become parties to the following international instruments:

- ...
- (g) The 1952 Convention on the Political Rights of Women;
- (h) The 1979 Convention on the Elimination of All Forms of Discrimination against Women;
- ...
- (k) The 1953 Convention on the Civil and Political Rights of Women;”¹⁴⁴

If a state is already a party to relevant international treaties, a provision emphasising the commitment to implementing the instrument has sometimes been included. The Agreement on Identity and Rights of Indigenous Peoples (Guatemala) contains an obligation for the government to “Promote the dissemination and faithful implementation of the Convention on the Elimination of All Forms of Discrimination against Women”.¹⁴⁵

Another option for addressing gender issues that has been utilised is the inclusion of provisions confirming the existence of such rights. This has often been done by using the language from the before-mentioned human rights instruments. For example, the *Doha Document for Peace in Darfur* asserts that all persons must be able to “enjoy and exercise” all rights “without discrimination on any grounds including sex, race, colour, language, religion, political or other opinion, national or social origin or social status”.¹⁴⁶ It adds that “Women, children and men shall be guaranteed the equal enjoyment of all rights enshrined in the international human rights and humanitarian law instruments to which Sudan is a party”.¹⁴⁷

A variation is offered by the approach of declaring that the state, the new order, or the system of government is based on gender equality. The 2008 *Agreement on Resolving the Challenges Facing Zimbabwe* provides that the new Government “will ensure equal treatment of all regardless of gender, race, ethnicity, place of origin”.¹⁴⁸ As another example, in South Africa it was agreed that the new constitution would provide for the establishment of a state with “a democratic system of

¹³⁹ Such deficiencies and the mainstreaming policy are addressed in more detail in Eve M. Grina, “Mainstreaming Gender in Rule of Law Initiatives in Post-Conflict Settings”, 17 *William and Mary Journal of Women and the Law* 435 (2010-2011), p. 473.

¹⁴⁰ United Nations, *Women, Peace and Security: Study Submitted by the Secretary-General Pursuant to Security Council Resolution 1325* (2000), p. 11 (2002).

¹⁴¹ Articles 2 and 7, UDHR.

¹⁴² E.g. Articles 2(1), 3, 26, ICCPR; Article 2(a), CEDAW.

¹⁴³ E.g. Washington Agreement, Confederation Agreement between the Bosnian Government and Bosnian Croats, 1 March 1994 (Bosnia and Herzegovina, Croatia, Bosnian Croat Representative), Annex, para A; Timetable for the Implementation of the Most Important Agreements Pending, 19 May 1994 (El Salvador, FMLN), Annex I, para e(2); Draft Agreement on the Krajina, Slavonia, Southern Baranja and Western Sirmium, 18 January 1995 (Croatia, Republika Srpska Krajina [RSK]), Annex B, para 12.

¹⁴⁴ Part I, Chapter II, Section 3, para 11, *Contadora Act on Peace and Co-Operation in Central America*, 7 September 1984 ([draft agreement], Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua).

¹⁴⁵ Section II, para B(1)(c), *Agreement on Identity and Rights of Indigenous Peoples*, 31 March 1995 (Guatemala, URNG).

¹⁴⁶ Article 1(4), *Doha Document for Peace in Darfur*, 31 May 2011 (Sudan).

¹⁴⁷ *Ibid.*

¹⁴⁸ Article VII(7.1)(a), *Agreement between the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and the Two Movement for Democratic Change (MDC) Formations, on Resolving the Challenges Facing Zimbabwe*, 15 September 2008.

government committed to achieving equality between men and women and people of all races”.¹⁴⁹ The same instrument also contained an example of another way of addressing gender equality and non-discrimination – incorporating a ban on violations of these rights. It provided that the new Constitution will “prohibit racial, gender and all other forms of discrimination”.¹⁵⁰ A similar approach was adopted in the 1992 Rwanda Protocol of Agreement, which entailed a “rejection of all exclusions and any form of discrimination based notably, on ethnicity, region, sex and religion”.¹⁵¹

Advancement of Women

Building on a general reference to gender equality and non-discrimination, peace agreements can include provisions laying down an obligation on taking action to ensure non-discrimination. This can be a generic obligation to implement or promote gender equality, or it can involve a specific area where gender equality has been problematic in the past. Taking action to implement non-discrimination is part of the international legal duty of states to ensure the upholding of women’s rights. Article 24 of CEDAW obliges states to “adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized” in it.

An example of a general provision can be found in the *Arusha Peace and Reconciliation Agreement for Burundi*, which requires the administration to “promote balance, including gender balance”.¹⁵² The same agreement also contains a broad provision on fighting discrimination, obliging the government to “pay special attention to the status of women and combat all discrimination against them.”¹⁵³ A more detailed provision can be found in the 2004 *Dar-Es-Salaam Declaration*, where the states also refer to their international obligations:

“[The signatories agree to] [a]dopt deliberate policies and mechanisms for promoting gender equality at all levels and in all sectors, at the national and regional levels, in accordance with the Millennium Declaration, the UN Security Council Resolution 1325 (2000), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the African Charter on Human and Peoples’ Rights, the Protocol on the Rights of Women in Africa, the Beijing Platform for Action and the African Union’s Declaration on Gender Equality in Africa”¹⁵⁴

Even if the will to implement gender-specific obligations is there, implementation can be lacking due to insufficient resources. A unique provision is found in the *Doha Document for Peace in Darfur*, which provides for a “system of grants for specific purposes shall be established, with a view to realising the MDGs, alleviating poverty and realising gender equality.”¹⁵⁵

An alternative approach to statements about gender equality has involved incorporating a generic provision emphasising the importance of the promoting women’s rights. Often the peace agreements that adopt this approach use the language of CEDAW Article 3, which declares that:

“States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the *full development and advancement of women*, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”¹⁵⁶

Several peace agreements contain provisions referring to the “advancement of women” in a general manner. The *Agreement on the Implementation Mechanism for the Transition Process in Yemen* obliges the Conference for National Dialogue to discuss the “adoption of legal and other means to strengthen the protection and rights of vulnerable groups, including children, as well as the *advancement of women*”.¹⁵⁷ The *Good Friday Agreement* also required the British government to pursue broad policies “for promoting social inclusion, including in particular community development and the *advancement of women in public life*” in Northern Ireland.¹⁵⁸

¹⁴⁹ Section I, Schedule 4 - Constitutional Principles of the Interim Constitution [Act 200 of 1993] (South Africa).

¹⁵⁰ *Ibid*, Section III.

¹⁵¹ Article 3, Protocol of Agreement between the Government of the Rwandese Republic and the Rwandese Patriotic Front on the Rule of Law, 18 August 1992.

¹⁵² Protocol I, Article 7(5), Arusha Peace and Reconciliation Agreement for Burundi & Annexes, 28 August 2000 (Government & internal actors).

¹⁵³ Annex IV, Chapter III(3.6), Arusha Peace and Reconciliation Agreement for Burundi & Annexes, 28 August 2000 (Government & internal actors).

¹⁵⁴ Para 35, Dar-Es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 19-20 November 2004 (Angola, Burundi, Central African Republic, Congo, DRC, Kenya, Rwanda, Sudan, Tanzania, Uganda, Zambia).

¹⁵⁵ Article 27, para 162, Doha Document for Peace in Darfur, 31 May 2011 (Sudan).

¹⁵⁶ Article 3, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 UNTS. 13, 19 ILM. 33, 38 (1980) [emphasis added].

¹⁵⁷ Part IV, para 21(g), Agreement on the Implementation Mechanism for the Transition Process in Yemen in Accordance with the Initiative of the Gulf Cooperation Council, 5 December 2011 [emphasis added].

¹⁵⁸ Para 1 (Economic, Social and Cultural Issues), Agreement Reached in the Multi-party Negotiations (the Northern Ireland Peace Agreement, the Good Friday Agreement), 10 April 1998 [emphasis added]. As another example, the Arusha Agreements provides for the “Initiation for tangible actions for the *advancement of women*”: Arusha Peace and Reconciliation Agreement for Burundi & Annexes, 28 August 2000 (Government + internal actors), Protocol IV, Article 13.

The same aim can be fulfilled by using analogous wording. The *Doha Document for Peace in Darfur* provided that the government of Sudan would “promote the general welfare and economic growth in Darfur through provision of adequate basic needs, services and infrastructure, promotion of youth employment, *empowerment of women*, good governance, public services and allocation of appropriate resources”.¹⁵⁹ A similar type of provision is contained in the *Istanbul Process on Regional Security and Cooperation for a Secure and Stable Afghanistan*, where Afghanistan reconfirms “its will and determination to [...] strengthen its economy, especially by ensuring good governance, promotion of investments, and addressing corruption, fight radicalism and narco-trafficking, respect human rights, in particular *the rights of women*, and to work together with its friends and partners for enhanced regional co-operation.”¹⁶⁰ When utilising long lists of activities, it needs to be ensured that women’s rights do not get lost amongst other priorities. A stand-alone provision might serve better to highlight women’s issues and rights. An example of such a provision is included in the *Lomé Agreement*:

“Given that women have been particularly victimized during the war, special attention shall be accorded to their needs and potentials in formulating and implementing national rehabilitation, reconstruction and development programmes, to enable them to play a central role in the moral, social and physical reconstruction of Sierra Leone”.

It is important to move beyond the abstract general affirmations of rights and provide for specific action in problem areas. Due to the length constraints of this article, only a few examples of specific focus issues will be provided – education, health and work.

Education

One area in which it is often necessary to enforce and promote women’s rights is education. Education is central to the reconstruction of society and gender relations. A legal right to education is also laid down in several human rights instruments. The International Covenant on Economic, Social and Cultural rights [ICESCR] recognises “the right of everyone to education”. The states parties agree, among other things, that: (a) primary education shall be compulsory and available free to all, (b) secondary education in its different forms shall be made generally available and accessible to all by every appropriate means, (c) higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and (d) the development of a system of schools at all levels shall be actively pursued and the material conditions of teaching staff shall be continuously improved.¹⁶² CEDAW deals with the right to education in the context of women’s rights. Article 10 obliges states parties to guarantee to women “equal rights with men in the field of education” and to ensure:

- “(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments [...];
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education [...], in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods; [...]
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women; [...].”

The importance of ensuring to girls and women equal access to education is also emphasised in Security Council Resolution 1889. The resolution directly links women’s education to the ability of women to actually be full participants in the post-conflict decision-making process:

“*The Security Council,*

[...]

Urges Member States, United Nations bodies and civil society, including non-governmental organizations, to take all feasible measures to ensure women and girls’ equal access to education in post-conflict situations, given the vital role of education in the promotion of women’s participation in post-conflict decision-making”.¹⁶³

¹⁵⁹ Article 1(9), *Doha Document for Peace in Darfur*, 31 May 2011 (Sudan).

¹⁶⁰ Para 6, *Istanbul Process on Regional Security and Cooperation for a Secure and Stable Afghanistan*, 2 November 2011 (Afghanistan, China, India, Iran, Kazakhstan, Kyrgyz Republic, Pakistan, Russia, Saudi Arabia, Tajikistan, Turkey, Turkmenistan, United Arab Emirates).

¹⁶¹ Article XXVIII, para 2, the *Lomé Agreement*, Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, 7 July 1999.

¹⁶² Article 13, *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3, *entered into force* 3 January 1976.

¹⁶³ SC Res. 1889 (2009), 5 October 2009, para 11.

Educating girls and women enables them to take on the roles that are foreseen in some of the more progressive peace agreements. Taking part in all aspects of public life is difficult to accomplish if women do not have the necessary knowledge or training. Moreover, many development specialists promote education as an entry point for addressing gender issues. Schooling for children and young adults comes at a time in human development when the mind is open to learning new information and ways of living. Thus, formal education is an important platform for reframing male and female understandings of gender roles and encouraging scrutiny of gender inequality.¹⁶⁴ Part of this involves the possible appraising of the curriculum: for example, to eliminate materials that present discriminatory or stereotyped views of women, or which omit significant facts, such as the exclusion of mention of the abuses suffered by the comfort women at the hands of the Japanese military in Japanese textbooks.¹⁶⁵

Getting more girls through school not only directly impacts their own welfare, but also the welfare of other family members and the community. Research has shown that women with only a few years of primary education have better economic prospects, have healthier children, and are more likely in turn to ensure their own children go to school. Mothers who have received an education have their children immunised fifty per cent more frequently than uneducated mothers, and the survival rate of children of educated mothers is fifty per cent higher. Each of these outcomes improves both the local community and the overall development of the country as a whole.¹⁶⁶

The *Doha Document for Peace in Darfur* has several articles that deal with gender issues in the education context. Article 1 states that the “needs of women, children and vulnerable groups shall be given due attention in the Darfur early recovery, reconstruction, rehabilitation and *education policies and programmes*”. Article 2 follows by laying down an obligation for all levels of government to:

“ensure the provision of continuing opportunities of general education, training and employment in public service to promote full and equal participation of the people of Darfur in advancing the nation’s welfare. In this context, *special attention shall be given to women* and children in the field of education, capacity building and training. Training centres shall be established in urban and rural areas in collaboration with specialised international and regional organisations.

Article 16 provides that policies must be “drawn up and implemented to develop the educational system and to secure access by the population of Darfur, without discrimination on the basis of race or gender, to equal opportunities to education and training within Darfur and the country”. The next sentence emphasises that “Special efforts shall be exerted to eliminate illiteracy among women”.¹⁶⁷

The *Arusha Agreement* contains a fascinating provision with regard to women and education:

“In today’s society, formal education is the key that opens the door to a better life. It affords access to jobs in the public and private sectors, where salaries are higher than in rural areas. Moreover, education beyond the primary level, especially for women, would help solve the problem of accelerated population growth, since educated households have better control over their fertility. It is for this reason that everyone in Burundi should receive an education. As Burundi is not yet able to educate its entire population, it must ensure that equity prevails in the sensitive area of school enrolment. Equity must be reflected in the location of schools and school infrastructure, and in the assignment of qualified teachers”.

A later paragraph also contained an obligation for the government to “Find solutions to the problems that prevent large numbers of girls from pursuing their education at the secondary and university level”.¹⁶⁸ Education certainly should be a priority area for advancing gender equality in most post-conflict situations.

Health

Women’s health is an important issue in the post-conflict context, as they are often the primary caretakers of the family. Also, specific health care needs arise after a conflict has taken place, such as treatment for sexually transmitted disease, including HIV/AIDS, and other consequences of rape. The ICESCR recognises “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” and foresees steps to achieve the full realisation of this right such as: (a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) the prevention, treatment and control of epidemic and other diseases; and (c) the creation of conditions which

¹⁶⁴ Eve M. Grina, “Mainstreaming Gender in Rule of Law Initiatives in Post-Conflict Settings”, 17 *William and Mary Journal of Women and the Law* 435 (2010-2011), p. 459.

¹⁶⁵ Christine Chinkin, “Gender, Human Rights, and Peace Agreements”, 18(3) *Ohio State Journal on Dispute Resolution* 867 (2006), p. 880.

¹⁶⁶ Naomi Cahn et al, “Returning Home: Women in Post-Conflict Societies”, 39 *Baltimore Law Review* 339 (2010), p. 353.

¹⁶⁷ Article 1(11), Article 2 (31), Article 16(101), *Doha Document for Peace in Darfur*, 31 May 2011 (Sudan) [emphasis added].

¹⁶⁸ Chapter III, paras 3.5, 3.6, *Arusha Peace and Reconciliation Agreement for Burundi & Annexes*, 28 August 2000 (Government + internal actors).

would assure to all medical services and medical attention in the event of sickness.¹⁶⁹ The provisions of the ICESCR (and human rights in general) need to be applied without discrimination on any basis. This is emphasised in CEDAW Article 12, which stresses that states parties have to take “all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning”.

The Security Council has also recognised “the particular needs of women and girls in post-conflict situations, including, inter alia, physical security, health services including reproductive and mental health”. In Resolution 1889, the Council encouraged states to address women and girls’ needs and priorities in post-conflict situations and “design concrete strategies [...] which cover inter alia support for greater physical security and better socio-economic conditions, through education, income generating activities, access to basic services, in particular health services, including sexual and reproductive health and reproductive rights and mental health”.¹⁷⁰ It is clear that women’s health is an essential aspect of the gender mainstreaming agenda.

Despite the importance of this issue, references to women in the health context are not very widespread in peace agreements. The *Arusha Agreement* has a provision dealing with health that touches upon women’s health issues:

“The crisis has also lowered the population’s standard of health. Immunization coverage, prenatal consultations and childbirth attended by qualified medical personnel have all declined. Acute malnutrition is on the rise, particularly among vulnerable groups such as children and pregnant and nursing women. The country must return to pre-crisis conditions and even improve on them in all areas”.¹⁷¹

In Iraq it was agreed that the state would guarantee “social and health insurance, the basics for a free and honourable life for the individual and the family – especially children and women”.¹⁷² In conflicts where there have been a lot of physical assaults on women, it is important to include ways to address both the physical and mental harm inflicted upon them. Unfortunately, this has been mostly lacking thus far.

Work

Ensuring that women have the possibility to participate on the job market on an equal level with men is essential to ensuring that women play a role in all aspects of public life. Employment provides an income and empowers women. They are no longer dependent on their husbands or fathers to have resources to buy food and other essentials. There are various human rights norms that have a bearing on the regulation of women in employment. For example, Article 7 of the ICESCR mandates that there be “fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work”. CEDAW provides that states parties have to “take all appropriate measures to eliminate discrimination against women in the field of employment” and ensure:

- “(a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training [...];
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave”.¹⁷³

A later article of CEDAW states that women should be guaranteed the same rights as men with regard to “bank loans, mortgages and other forms of financial credit”.¹⁷⁴ Access to employment and financing for women is addressed in the *Dar-Es-Salaam Declaration*. It contains an obligation to “Formulate national and regional policies that promote the *employment*

¹⁶⁹ Article 12, International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3, *entered into force* 3 January 1976.

¹⁷⁰ SC Res. 1889 (2009), 5 October 2009, para 10.

¹⁷¹ Chapter III, para 3.5, Arusha Peace and Reconciliation Agreement for Burundi & Annexes, 28 August 2000 (Government + internal actors).

¹⁷² Article 30, Constitution of Iraq, 15 October 2005.

¹⁷³ The full list is contained in Article 11, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 UNTS. 13, 19 ILM. 33, 38 (1980) [emphasis added].

¹⁷⁴ *Ibid*, Article 13.

of women and youth and develop appropriate regional financing mechanisms so as to give them *more access to micro-finance institutions*, investment opportunities in trade and control of factors of production such as land, property and capital". The same agreement later provides that "national and regional mechanisms" should be established and strengthened, in order to "mainstream gender issues in all sectors of economic development".¹⁷⁵

The *Doha Document for Peace in Darfur* creates a micro-finance system, which is mandated to "give particular importance to women's income generating activities especially those of widows". The same agreement establishes the Darfur Reconstruction and Development Fund, which is tasked, among other things, with "Establishing financing mechanisms to meet the special needs of women, children and orphans. Such mechanisms shall include, but not be limited to, the provision of loans, investment opportunities, strengthening of productive capacities, production inputs and capacity building for women".¹⁷⁶ Another instrument that foresees a specialised fund is the *Kenyan Statement of Principles on Long-term Issues and Solutions*, which states that the Women's Enterprise Fund (dealing with Kenyan female entrepreneurs) should be enhanced.¹⁷⁷ Such mechanisms can assist in ensuring that steps are taken to ensure the actual implementation of the various types of provisions that have been included in peace agreements.

7. Conclusion

Summing up, both international legal rules and UN policy mandate the incorporation of gender considerations into all aspects of peace-making and post-conflict reconstruction of societies. Women's rights need to be included in peace agreements. However, most peace agreements do not contain any references to women. When the role of women is addressed in peace agreements, there is a lot of variation regarding the various kinds of provisions that have been incorporated, as can be seen from the examples provided in this article.

In practice, the most popular types of provisions are broad declarations of gender equality and the rights of women. But it is important that general affirmations be used alongside more specific provisions regarding problem areas. Gender mainstreaming should be done through tailored approaches to fit each specific conflict situation. The first priority should be a thorough study of domestic culture to find out elements within societies that impede gender equality. And then specific approaches need to be developed to address such elements.¹⁷⁸ It is important to understand local historic, cultural and legal contexts and ensure that the specific circumstances are taken into account when devising the most practicable methods of addressing women's issues in that context.

It should also be kept in mind that it is often necessary to move beyond just laying down rights for women in peace agreements. Though this is of course an essential first step, such an approach might not be enough to address the power imbalances and other structural factors that perpetuate the subordination of women.¹⁷⁹ Also, women are often unable to exercise those rights because they lack legal literacy or cannot access them because of longstanding cultural barriers that reinforce women's subordinate status.¹⁸⁰ Accordingly, various implementation provisions are crucial to ensure the impact of declarations of rights in peace agreements in practice and to advance gender equality in countries emerging from conflict.

¹⁷⁵ Paras 48, 55, Dar-Es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 19-20 November 2004 (Angola, Burundi, Central African Republic, Congo, DRC, Kenya, Rwanda, Sudan, Tanzania, Uganda, Zambia).

¹⁷⁶ Article 19(133), Article 21(141), Doha Document for Peace in Darfur, 31 May 2011 (Sudan).

¹⁷⁷ Agenda Item 4, para 7, Kenyan National Dialogue and Reconciliation: Statement of Principles on Long-term Issues and Solutions, 23 May 2008 (Government, ODM).

¹⁷⁸ This is also highlighted in Eve M. Grina, "Mainstreaming Gender in Rule of Law Initiatives in Post-Conflict Settings", 17 *William and Mary Journal of Women and the Law* 435 (2010-2011), pp. 454, 456.

¹⁷⁹ Julie Mertus, "Improving the Status of Women in the Wake of War: Overcoming Structural Obstacles", 41 *Columbia Journal of Transnational Law* 541 (2003), p 548.

¹⁸⁰ Naomi R. Cahn, "Women in Post-Conflict Reconstruction: Dilemmas and Directions", 12 *William and Mary Journal of Women and the Law* 335 (2006), p 345.