

# Report of the Global Consultation on the Application of Women's Human Rights Framework on the Issues of Women Affected by Conflict

Colombo, Sri Lanka October 15-17, 2010

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## EXECUTIVE SUMMARY

This report<sup>1</sup> documents the discussions of a three day consultation organised by IWRAW Asia Pacific, which is part of an overall strategy on broadening and strengthening the standards governing protection and promotion of women's human rights in conflict situations, in post-conflict societies and in societies in transition. Overall, the strategy moves away from a framework focusing solely on violence and on the 'protection' of women, to a framework that is centered on the 'protection of women's human rights' using the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and through the mechanisms and processes of the CEDAW Committee, as well as other relevant international standards and women, peace and security mechanisms of the United Nations. More immediately, we hope the substance of the report will directly contribute to deepen and enhance discussions the CEDAW Committee will be initiating in its work to elaborate on a General Recommendation on women and conflict.

IWRAW Asia Pacific has worked on the issue of conflict in support of its national partners since 1997. Since 2009, IWRAW has collaborated with Women's International League for Peace and Freedom (WILPF), Global Network of Women Peacebuilders (GNWP) and Women and Media Collective, Sri Lanka, and with various other technical experts including Kamala Chandrakirana, Deepika Udagama, Alice Miller and Allison Davenport of the WILD for Human Rights Initiative of the Miller Institute for Global Challenges and the Law of UC Berkeley Law School and DAWN (Development Alternatives with Women for a New Era) collectively toward our common goal of obtaining state accountability for protecting and realising women's human rights in the context of conflict.

## I. ACKNOWLEDGMENTS

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- Our organizational partners in this endeavor: Sepali Kottegoda and Kumudini Samuel of Women and Media Collective; Mavic Cabrera-Balleza of Global Network of

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<sup>1</sup> Report authors include: Alice M. Miller, Faculty Director, WILD for Human Rights, UC Berkeley Law School, Allison Davenport, Director, WILD for Human Rights, UC Berkeley Law School and Magda Goitom and Cole Taylor, students with the International Human Rights Law Clinic at UC Berkeley Law School. Members of the planning team of the Consultation also commented on the report.

Women Peacebuilders; the Women's International League of Peace and Freedom and Development Alternatives with Women for a New Era.

- Members of our planning team: Kamala Chandrakirana, Shanthi Dairiam, Deepika Udagama, Alice Miller, and Allison Davenport.
- Members of the UC Berkeley Law School documentation team: Magda Goitom and Cole Taylor.
- The participants who shared their valuable insights which have gone into identifying the context and content of this document and our continued engagement on this issue of women and conflict and whose continued advocacy and work on the impact of conflict on women provide us inspiration.

## II. INTRODUCTION

In October of 2010, a three-day global consultation on the application of a women's human rights framework to conflict affected situations was held in Colombo, Sri Lanka. The consultation was organised by International Women's Rights Action Watch Asia Pacific (IWRAP-AP) and hosted by Women & Media Collective. The planning team for the consultation, in addition to the above organizations, included the Global Network of Women Peacebuilders, and WILD for Human Rights of the University of California at Berkeley Law School. The consultation was made possible through the generous funding of the Global Fund for Women and Oxfam Novib. The consultation occurred as part of ongoing efforts, supported by IWRAP-AP, to focus the attention of the Committee for the Convention on the Elimination of Discrimination Against Women (CEDAW) on the issue of women affected by conflict. IWRAP-AP and the planning team members organised the consultation at a venue in which women's rights advocates living and working in diverse situations of conflict, transitional and post conflict societies could discuss the pressing issues faced by women and girls, that can inform the work of the CEDAW Committee.

The consultation drew activists, lawyers, policy-makers, advocates, and grass-roots organisers from around the world working to promote and protect women's human rights in varying stages of conflict. Participants came from Eastern Europe, the Middle East, North and

South America, Africa, South and South East Asia, as well as Asia Pacific.<sup>2</sup> The consultation sought the input of these diverse participants to identify gaps in existing legal protections for women's rights during and after conflict, as well as barriers to the effective implementation of those protections. The consultation also aimed to develop cohesive local, national and international strategies that would utilize all available frameworks for the support of the rights of women, including CEDAW and other International Human Rights Law, International Humanitarian Law, relevant Security Council Resolutions, especially 1325 and 1820, and other relevant international mechanisms and sources of law.

The consultation's agenda and goals were established based on the understanding that strengthening the protections for women and girls would require recognition of the diversity of women, the variety of conflict settings and the varying roles played by women within conflict. Additionally, participants emphasized the necessity of addressing the full range of actors involved in conflict, transition and post conflict settings, including states playing multiple roles territorially and extra-territorially, opposition and other non-governmental forces, domestic and transnational businesses and other economic actors, multi-lateral organizations (assistance, trade and financial entities, for example) and inter-governmental and non-governmental organizations.

**The primary objectives of the consultation were:**

1. To bring together a group of women and women's rights advocates from around the world to share their experiences of living and working in conflict affected settings, and to identify the diverse impacts of conflict on the rights of women and girls.
2. To identify gaps in the existing legal framework protecting the human rights of women and girls in conflict settings.
3. To promote an interpretation of the international legal framework, and of CEDAW in particular, that more fully protects the entire range of women's human rights during and after conflict.

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<sup>2</sup> A full list of participants and their organizational affiliations is attached as Appendix B. Because participation from countries outside Asia was more limited, the planning team hopes to organize subsequent meetings in other regions, to capture the diversity of conflicts and experiences.

4. To clarify how CEDAW may better engage states in implementing these protections.
5. To strengthen the capacity of civil society organizations to interact with the CEDAW Committee, both in providing country information and in supporting the development of a new General Recommendation on conflict.
6. To generate input to share with the CEDAW Committee in drafting a General Recommendation on women affected by conflict

The participants recognized that the impacts and experiences borne by the diversity of women and girls in conflict settings are not adequately addressed by the existing discourse of human rights, and that the current interpretation and implementation of international and national human rights legal frameworks often fail to fully address substantive harms to the rights of women and girls in conflict, transition and post conflict settings. Discussion was premised on the understanding that in order to strengthen the protections for women and girls in conflict, transition and post-conflict settings, key sources of guidance on state obligations toward women's rights, such as CEDAW, must acknowledge and address the diversity in type and nature of contemporary conflict, the diversity and multiple roles held by women and girls within such conflicts, and the roles played by the full range of state and non-state actors involved.

Through plenary discussion, small work groups, expert presentations, and case studies of conflict settings, the consultation participants identified often overlooked issues impacting the rights of women and girls in conflict settings. Among the diverse topics discussed, four areas were highlighted as needing a higher profile in the range of issues to be addressed in any future General Recommendation on women and girls in conflict settings:

1. The invocations of tradition and custom in the enforcement or limitation of gender roles and behaviors during and after conflict, with specific impacts on the rights of both civilian women and female combatants;
2. The diversity of conflict settings and the need to protect women's rights even in settings that are not formally deemed 'armed conflict' under international law, with particular attention to

the role that policies justified by reference to the so-called ‘war on terror’<sup>3</sup> have on rights; as well as the role of women in peacemaking and reconstruction;

3. The unique challenges to women’s rights presented by statelessness, displacement and occupation; and
4. The need to clarify the duties of all parties involved in conflict in regard to human rights of women, including previously unrecognized roles of such global actors such as bi-lateral and multilateral donors, international financial institutions, parties to trade agreements, peace-keeping troop contributing states, non-governmental and humanitarian actors.

Addressing these four aspects of conflict would strengthen the work on issues such as the impact on women of direct violence related to ongoing armed conflict including sexual violence; enforced displacement and return and reintegration and promote women’s equality across the full range of civil, cultural, economic, social, and political rights affected by conflict.

The diversity among women and girls arose as a critical theme in each of these areas: participants noted that the tendency of policy makers to address ‘women and girls’ as if they had identical experiences and interests because of their common gender has become an obstacle to effective protection of rights: women play different roles in conflict (as noted, combatant as well as civilian), have different political affiliations and beliefs, as well as relationships to the state (some are beneficiaries of state victories in conflict while others are not). Policies and programs must therefore recognize these different positions of women and girls: gender specificity alone will not fully promote rights, but inter-sectional (‘gender and’) strategies are essential.

Having identified these key themes, the participants discussed potential interventions and advocacy strategies for strengthening women’s rights protection at the local, national, and international level. First and foremost, the consultation emphasized the current and potential role of CEDAW in urging states to fulfill their obligations to protect women’s rights, both under the Convention itself, and through other sources of Human Rights and Humanitarian law. Secondly,

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<sup>3</sup> Participants noted that the ‘war on terror’ comprehends situations that may be covered by humanitarian law of conflict, as well as situations outside of that framework, all of which may have a gender-specific impact. See, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, UN Doc. A/64/211 (3 August 2009), Section III offers an analysis of counter-terrorism measures from a gender perspective.

the consultation agreed to support the proposed work of CEDAW in developing a new General Recommendation on the rights of women and girls in conflict settings. Finally, participants discussed ways to strengthen the capacity of civil society and women's rights advocates to improve state compliance with CEDAW through case studies, shadow reports, and collaboration with other sectors of human rights advocacy.

### **III. INSIGHTS, PRESENTATIONS, AND DISCUSSIONS AROUND CORE ISSUES**

#### **A. Time, justice, the creation of democratic space and the diversity of women in conflict**

During the opening session of the consultation, Kamala Chandrakirana, activist and former Chairperson of Komnas Perempuan (National Commission on Violence against Women), presented a case study on Indonesia entitled, "Addressing Women's Human Rights in Diverse Armed Conflict Situations: 1998-2009." Chandrakirana described the devastating impact that conflict in Indonesia has had on freedom, equality and development, and in particular on women's human rights over many decades and how women have stepped in to contribute to the creation of new democratic spaces to tell their stories, assume new positions, and engage in the political process, including through the establishment of Komnas Perempuan (KP) or the National Commission on Violence against Women. Importantly, the work of KP encompassed many different types and eras of conflict, from the repression of the Communist party in the 60s to the more recent conflict in Aceh. Chandrakirana's presentation revealed the *paradox of time: recognition of rights abuses and effective responses often took years to build, especially if marginalized or stigmatized women were to fully participate, yet the push in many post-conflict settings is to 'get justice done fast'*. Discussion highlighted the need of civil society to remain engaged over time to ensure full justice, especially when political and ethnic tensions tend to block recognition of women identified with the 'feared' group.

- Authoritarian regime rules Indonesia for 32 years but the 1997 economic crisis and massive demonstrations in 1998 signal the demise of the regime. Shortly after the transition, reports of mass sexual violence against ethnic Chinese minority women surface and there is an outpouring of public outrage.
- In 1998, a group of women leaders met with the president to establish a National Commission on Violence Against Women: Komnas Perempuan (KP). KP's mission is education, analysis, and policy input on violence against women with an emphasis on accountability and victims' rights.



- Indonesian women begin to break their silence about the violence that has pervaded Indonesian society in distinct armed conflict situations from 1965-2009: urban mass riots of 1998; military vs. separatist armed groups for self-determination; inter-religious/ethnic communal conflicts; natural resource conflicts; persecution of minority religions; and the anti-communist pogrom in 1965-66.
- Peacetime brings new forms of rights violations and discrimination. Partial Sharia law was introduced in Aceh in 2001 as part of an autonomy deal offered by the government.

The Indonesian experience highlighted other important overarching themes that surfaced throughout the consultation. Of primary importance was the recognition of the *interconnectedness of conditions for sustainable peace, with the equality and enjoyment of rights by women*. Women's rights protections generally and the ability to participate in peace negotiations is only as good as the reality of the democratic space in which peace negotiations occur. Women cannot effectively ask for their own equality within the context of an unfair peace process or a false secular space. More specifically, there was consensus that CEDAW, in line with its preamble and the commitments therein<sup>4</sup>, must attend to underlying conditions in order to ensure a just peace and the governmental structures capable of ensuring human rights for all, in order to carry out its primary mandate to eliminate discrimination against women. The health of the democratic space in a given society and the equality of women in that society are inextricably linked and all available legal resources must be brought to bear on ensuring the full realization of both.

With this recognition of the inter-connectedness of accountable and democratic states and women's rights in mind, in plenary sessions and in small group discussions, participants discussed the range of roles and experiences of women across different phases of conflict and policy and political structures with an eye to key substantive issues<sup>5</sup> and the multiplicity of actors involved in or party to conflict. Over the course of three days, groups were asked to consider questions revealing barriers to rights protection for the wide range of women affected by conflict. Participants grouped the issues according to a novel typology:

(a) policy level restrictions,

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<sup>4</sup> In particular, CEDAW Preamble ¶8 which invoked a new global economic order and its potential for equity and justice as "... Contribut[ing] significantly towards the promotion of equality between men and women."

<sup>5</sup> Note: Specific issues of health, housing, land rights, food access/scarcity, freedom of expression, assembly and movement, employment, education, and violence were topics of discussion during the consultation and will be addressed throughout the report but will not have specific sections.

- (b) specific bodily integrity concerns and
- (c) every-day impacts of conflict on rights<sup>6</sup>.

Throughout the consultation, participants were encouraged to consider what interventions would make the difference in increasing protections of the rights of girls and women in conflict, transition and post-conflict settings. Some of the significant issues raised in discussion are outlined below.

## **B. The Relationship Between Calls To Tradition And Protection Of Rights During Conflict, Transition And Post-Conflict**

A major theme raised at the Consultation was how key players invoked, often selectively, aspects of traditional systems and practices during conflict, transition and in post-conflict settings in ways that impact women's rights. Discussions considered two important aspects of the call to implement traditional systems in conflict-affected settings:

- 1) the multiplicity of roles women take or are prohibited from taking in various stages of conflict and
- 2) how this is connected to the exercise of power through the instrumental and selective invocation of traditional systems that ultimately impact the rights of women.

### **i. Women Outside of Traditional Families/Male-Headed Households**

While CEDAW has addressed the rights of women within the family and marriage, participants concurred that the current rights framework needs to more fully consider those issues in the context of conflict and with a focus on women outside of traditional families. Participants noted that women are most commonly referred to as victims of violence, survivors of war or caregivers during conflict, but that in reality they occupy diverse roles that do not fit neatly or sometimes at all into these more traditional categories. The full range of roles includes women as heads of household (de jure and de facto), single women, disabled women (caring for, being cared for or being excluded from their families), widows (included or excluded from family survival strategies), women in sex work and those coerced into prostitution, female

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<sup>6</sup> See Agenda of Consultation attached at Appendix A.

combatants and ex-combatants, lesbian and transgender women, and adolescent and young girls playing or forced into new leadership roles.<sup>7</sup> Women may be both perpetrators of violence and abuse, and victims of violence and abuse –sometimes at the same time. They may need to face processes of justice for their participation in abuses (and those justice systems must in turn be fair and rights promoting) as well as deserve protection from unfair prosecutions, or need access to justice for reparations and other remedies for violations suffered in conflict.

*In order to fill gaps in protection of rights for these multiple roles and experiences of women, a greater range of these roles need to be recognized and the obstacles women and girls face better understood.*

Women and girls outside of traditional familial roles face marginalization and particular challenges to access to resources and participation in their communities, including lack of legal standing (because of unclear or stigmatized marital status), denial of employment opportunities, denial of benefits and services, and obstacles to land ownership and access. These barriers may also vary depending on the political or ethnic affiliation of the women, and the status of their group *vis a vis* the conflict (victors, defeated, expelled, etc). CEDAW must acknowledge this variation among women as well as between women and men. Many participants noted how women often become the primary wage earners when their husbands are away fighting or upon their husbands' death or serious injury from combat. While the security of the family is wholly dependent on these women's wages, they are often not legally recognized as heads of household, either by state or non-state actors. Participants pointed to situations where IGO or NGO funding agencies distribute relief only to the registered male heads of households and overlook these families headed by women, leading to further marginalization. Moreover, in countries where land passes traditionally through the males of the family, women who have become heads of household after the death of their husbands or fathers are denied rights to land they have long lived on, cultivated and relied upon.

The economic and social exclusion of women in non-traditional household positions can lead to serious rights abuses as many women, striving to find livelihoods in conditions of

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<sup>7</sup> See Committee on the Elimination of Discrimination Against Women, General Recommendation 28 (The Core Obligations of States Parties under Article 2 of the Convention) [18] and [26].

economic desperation, face barriers to safe and legal migration or entry routes to legal work or formal labor sectors, and thereby are at risk of exploitative labor agents, coercive smugglers or others who may use force or fraud to hold them in prostitution, domestic work or other sectors.<sup>8</sup>

## **ii. Female Combatants and DDR programs**

Consultation participants were unified in raising issues related to female combatants and ex-combatants as a major gap in current human rights protections and policy debates. During conflict women occupy a range of roles related to the conflict, including active combatants, domestic workers, porters, slaves, including for sexual exploitation, commanders, spies, or “brides/wives” of superior officers. These roles are often not recognized as ‘combat’ positions and as a result women are left out of demilitarization, demobilization, and reintegration (DDR) programs in the post-conflict period. Thus, women are excluded from reintegration programs post-conflict and fail to receive the same recognition, benefits, or treatment as their male counterparts.

Participants agreed most DDR programs tend to be biased against women and girls because they focus only on ex-combatants who engaged in active combat and carried arms, and most often these ex-combatants are men. The work done by women in belligerent forces during conflict, whether domestic, administrative, or of another nature, is not recognized in the post-conflict period. The differential treatment afforded different sides of the conflict also affects women and girls in the conflict, as does the difference in treatment accorded regular and irregular combatants, or rebel and guerilla groups.

As a result, programs are not designed to serve women and girls and do not consider the special needs of women and girls, including their reproductive health, psychosocial issues, and treatment needs. Women may emerge from guerilla groups with new (sometimes involuntary) families, and parental roles. Young women who are mothers are particularly ignored. Even

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<sup>8</sup> See CEDAW Article 6 and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (‘The Palermo Protocol’), Article 3 which defines human trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

where female ex-combatants had directly engaged in combat, many participants noted that they are often still marginalized as DDR programs focus almost exclusively on meeting the needs of male ex-combatants. A participant from Croatia explained that female ex-combatants, although they had engaged directly in the fighting, are not awarded military medals and are not given access to treatment for post-traumatic stress syndrome through official channels like their male counterparts. Participants stressed the need for state parties to collect gender, age and other relevant disaggregated data on the participation, and specific needs of female combatants (including responding to maternity) and to make this data available in designing more inclusive DDR programs.

Many participants noted that when some DDR programs are designed to incorporate female ex-combatants, those programs often reinforce gendered stereotypes and perpetuate the same discrimination against women that was present before the conflict. Some participants noted that the state goes so far as to demonize the roles assumed by women during conflict and tries to erase their experiences as combatants and the knowledge and skills that might have been acquired and used during the period of conflict. Moreover, the actual roles of women in combat forces as combatants, forced workers, slaves, including for sexual abuse, as well as the functions they played or were forced to play in entertainment, food generation and preparation, camp construction and maintenance, transportation, communications, information gathering and other kinds of work are denied. As a result, the right to compensation for that labor is left unrecognized and those same women are encouraged to conform to their expected roles inside the so-called 'traditional family' or are ostracized.

An Indonesian participant provided an example of this attempt to create the new good stereotypical woman post-conflict through vocational training in traditional female trades such as sewing, knitting, cosmetology, and photography to document weddings. Participants described that many women experience their changed roles during conflict as just temporary, especially as the state's efforts to promote traditional roles is used to signal a return to 'normalcy' and control of the nation in the post-conflict period. However, some participants had seen a different post-conflict experience that did not reflect this same gender bias. A participant from Sri Lanka noted that female ex-combatants were taught carpentry, masonry, computers, and other trades as part of

DDR programs. Despite this example, most participants had found that post-conflict settings are often the stage for the re-construction of traditional gender roles. This often entails the selective use of only one culture or religion, usually that of the dominant or elite group, as the source of gender roles but this new vision of gender norms and stereotyping is then imposed across different ethnic and cultural groups.

Participants described many instances in which women become the focal point of social projects designed to equate peacetime with tradition. A participant from Indonesia described the use of mass weddings, in which former female combatants are made to act as public symbols of the need to return to traditional female roles in the community, as an example of the state orchestrating a shift to traditional roles. Participants explained that these mass marriages are state sanctioned and sometimes include women marrying the person (man) with whom they had been intimately involved with, whether voluntary or involuntary, during the conflict. Many participants also stated that women are often forced to dress in a more ‘traditional’ manner after the conflict than before it, as this new form of dressing is used as a means of reestablishing the importance of women as mothers and distinguishing them from their former roles as combatants or other non-traditional roles during conflict. This conflation of peace with tradition prevents the possibility of transforming gender roles in the post-conflict period. Overall, participants emphasized that it is the responsibility of the state to ensure that the DDR process contributes to greater freedom and participatory social justice and embodies gender equality. Participants agreed that CEDAW, particularly through its careful application of the duties of states under Article 5, in combating gender stereotypes of women and men, can play a critical role in guiding this process.

### **iii. The Exercise of Power in conflict, transition and post conflict societies through Traditional Systems and Practices Impacting Women’s Rights**

An important aspect of the discussion around tradition was the role of customary legal systems. Participants raised concerns about the rights of women in negotiating their rights in statutory and customary legal regimes, particularly with regard to family law, criminal law,

mediation, and land issues. Women's voices are often absent in both the political process of legislating or making law pre and post conflict, as well as in determining how traditional legal systems are to be incorporated. At the same time, women may have opposing positions on the role of tradition and religion in their lives: there is no single 'women's voice', thus, while inclusion in political decision-making is key, it also must be paired with recognition of the right of expression of divergent women's voices, and state obligations to ensure women's equality in regard to any policies enacted as an expression of tradition. In this context, discussions highlighted that women's participation and developing gender-equality promoting policies are two related but not identical processes, and both are needed.

Savitri Goonesekere, former CEDAW Committee member and emeritus Professor of Law, Colombo University, during her presentation on the first day of the consultation, explained that in pluralistic legal regimes it is crucial that many different women have a role in the interpretation of religious and customary law. She highlighted the need for a political project in reinterpreting religious systems and customary systems with international law providing both the source for the right to reinterpret as well as the framework for analysis. Goonesekere emphasized that under CEDAW, the diversity of religion and culture cannot be allowed to undermine substantive equality for women. Despite the potential for opposing beliefs and opinions about the application of principles drawn from traditional or religious law in state laws and policies, Goonesekere stated the politicization of differing interpretations is part of democratic decision-making and should not preclude women from participating and asserting different interpretations.

Participants pointed to the need to understand, engage with and as appropriate, incorporate aspects of local and regional traditional systems, as long as certain substantive and procedural protections were always retained to ensure the freedom and equality for women and girls. For example, in a discussion on land rights, participants agreed that customary land titles should be recognized as an aspect of the legal system post conflict, but there must also be engagement around the discriminatory aspects of these traditional systems so they can be altered in their application post conflict to be more equitable. Participants noted that successful strategies for change needed to engage exactly those groups, especially religious leaders and

elders (often having played a key role in peace negotiations with opposition groups or states) who might pose a barrier to equality. Participants discussed strategies for securing their support for discrete, tangible reform which ensured girls and women's equality.

The Indonesian case study highlighted the need for diverse and opposing women's voices in the interpretation of culture and tradition, specifically calls to incorporate and apply Sharia Law, especially in light of the obligation of the state to consider how customary systems impact women's rights and the use of culture and religion by various parties in advancing their cause. Selective aspects of Sharia Law were incorporated into local law as part of the peace agreement with rebel groups in Aceh and the interpretation promoted by powerful groups within the peace negotiation process has given rise to new categories of crimes and forms of punishment, including public flogging. Some women who opposed the state during the conflict supported this incorporation; while other women—also in opposition groups or independent groups—disagreed with their interpretation. Ironically, some of the women initially supportive of the so called 'traditional law' have since changed their minds as time passed and their reliance on certain leaders to ensure their voices declined, and their exposure to different approaches grew. Thus, in the post- conflict period, new forms of authoritarianism have arisen in Indonesia with differential negative impacts on women and men, as well as on differently situated women. Because, participants noted, customary law in Indonesia is often based on the belief in the inferiority of women, women have not been afforded the opportunity of full debate and information influencing the manner in which Sharia Law was institutionalized. However, through judicial review of laws and policies, some aspects of some of the various traditional systems have been subject to scrutiny, but tensions persist.

Through this and other examples shared by participants, the importance of many different women having access to debate, especially over the interpretation of customary law, was emphasized as was the need for CEDAW to recognize the particular constraint on women's participation post-conflict, as transitioning states or victorious governments used or acceded to demands of rebel groups regarding 'tradition' and the role of women and men. Articles 1, 2 and 5 can be used to address the invocation of discriminatory religious and customary laws, as well as the selective and arbitrary imposition of religious and customary law by means of a thorough



application of Article 5 with an eye to the dynamics of post conflict reconciliation politics.

#### **iv. Access to and Manipulation of Marriage, and Forced Marriage**

Throughout the consultation, participants pointed to the manipulation of marriage during conflict and post-conflict and the resulting impact on the rights and security of women and girls as an area of concern. In different societies, arranged marriages (sometimes forced) are used by families as a means to settle debt, relieve poverty, obtain residency permits for family members, display status, provide inheritance, counteract fears of female independence and thus fears of sex outside of marriage or ‘promiscuity’, de-stigmatize rape victims, or as compensation for a wrongful death occurring between communities or kinship groups. Situations of conflict, transition and post-conflict add additional layers to the cultural and legal need for and meaning of marriage. During conflict, entry into marriage, often early and underage marriage, is used to protect men and/or women from recruitment in to the armed forces or guerilla groups resulting in a range of gendered consequences for women and girls. For girls and women, who are particularly at risk of gender-based violence during conflict, marriage is used in the belief it can afford them protection from kidnapping and/or forced movement into prostitution (trafficking). Alternatively, marriage is also used to constrain or exploit women during conflict and post-conflict, by restricting women and girls’ movements, and freedom of decision about whether to enter into marriage or not, or the choice of their spouse. At times, marriage may be used by families to barter with state or irregular combatant forces including by providing ‘wives’ for combatants. If women and girls have few rights as wives, such a marriage can serve as a gateway to movement into forced labor, domestic work or prostitution, or trafficking. Women sexually active outside of marriage, trans-women or women of different sexual orientations may be denied or forced into marriage, respectively as a way of constraining their gender expression and sexuality in the shifting societies in transition and post conflict.

In the post-conflict period, many participants noted that marriage is encouraged by states as a means of demonstrating stability and order. Some participants noted that certain communities attempt to ‘close ranks’ in the post-conflict period in order to strengthen their identity and assert their position within a society. There is often a resurgence of coercive

arranged or forced marriages, early marriage, and polygamy in the wake of conflict as part of this community rebuilding process. Furthermore, marriage and procreation are seen as the ‘duty’ of women toward their community. After the violence and destruction of conflict, the community’s women are responsible for producing the next generation and ensuring the community’s longevity. However, women of different ethnicities and political positions in the conflict may be differently affected by this pro-natalist stance: some are constrained from having children, while others are coercively encouraged to do so.

Participants noted that non-conforming women, particularly single women, often face accusations of witchcraft<sup>9</sup> or other negative labels, which are evoked to persecute them and provide an example to other women regarding the consequences of such behavior. With such allegations, women may be driven from the community, deprived of their livelihoods and homes and lose their children, as well as, at times, their lives.

The ability of women and girls to resist forced and early marriage is often diminished by serious obstacles in the form of violence, assertions of selected cultural values, and familial and social pressures. Participants remarked that these factors tend to become more entrenched during conflict, where conservative and patriarchal practices are encouraged as strategies useful in resisting an outside aggressor, or distinguishing competing ethnic groups from each other. Thus, participants noted that marriage can become the site of ‘protection’ or clear exploitation of women and girls during conflict, but it is rarely the result of an independent choice. The personal decision to marry as a product of ‘full and free consent’, as enshrined as a core right in human rights for all persons, and protected in Article 16 of CEDAW, becomes a constrained fiction in conflict, transition and post conflict unless women’s and men’s fundamental freedoms and equalities are guaranteed.

#### **v. Systems of Redress and Reparations: Time rushed, time wasted**

Participants expressed the need for effective mechanisms of redress and reparations and explored the ways in which both justice-based and traditional systems present strengths and limitations. Many factors, including the process itself, the range of available remedies, and the

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<sup>9</sup> See, UNHCR research paper No. 169: *Witchcraft allegations, refugee protection and human rights: a review of the evidence*, Jill Schnoebelen, PDES Working Papers, 10 January 2009.

passage of time can all affect women's participation in such systems. Participants noted that the international community often rushes to establish formal judicial mechanisms post-conflict but that there is a tension between the need to put systems in place at the conclusion of conflict and the time many women need to be ready to access such systems. Justice-based systems can cut off the timeframe for seeking redress or fail to recognize certain kinds of harms suffered, excluding women from those systems and ultimately affecting reconstruction, development, and impunity. Some participants noted that the obstacles to redress are particularly challenging when the violations were perpetrated by governmental soldiers (especially when women were associated with rebel or opposition or stigmatized groups) or peacekeepers. Mechanisms for such violations can be non-existent, overly bureaucratic or come with serious risk of reprisal.

In the transitional and post-conflict setting, customary and religious law may gain strength since formal legal systems were impaired during conflict. Participants noted that post-conflict, the formal legal and administrative systems of states may retreat, or be withdrawn as part of the peace negotiations with opposition groups, and this allows tribal councils and local groups to use (or selectively claim to use) customary or religious law in the secular space, especially in regard to formal adjudication of inter-personal disputes or to regulate family law. However, this new application of precepts from custom or religion can be problematic because customary and religious systems often do not recognize gender equality and may actually advocate discriminatory practices, such as the denial of women's decision making through requiring a male guardian's approval to marry or take other actions. Such practices can lead to human rights abuses such as child or forced marriage,<sup>10</sup> severe and even abusive punishments for women who do not adhere to acceptable gender roles (such as flogging for sexual behavior outside of marriage), denial of property rights, and restrictions on movement and communication. Furthermore, participants noted that international organizations overseeing peace processes in post-conflict settings sometimes give preference for traditional systems-including tolerating denials of women's rights- with the intention of gaining support of the local community. Participants noted that in reality these traditional systems often undermine women's

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<sup>10</sup> See Committee on the Elimination of Discrimination Against Women, General Recommendation 21 (equality in marriage and family relations) [15]-[16].

rights and refuse to acknowledge gender specific issues, thus non-governmental aid agencies become complicit in violations of women's rights.

Because traditional legal models of redress can be fraught with obstacles and since there are few means or resources for women seeking formal redress or justice in many countries, women's rights groups often rely on independent (often organised by women's groups or human rights groups) projects of documentation of violations to encourage victims to break their silence about their experience of abuse in conflict. Chandrakirana, in her presentation on Indonesia, explained that the purpose of such documentation is multifaceted: recording experiences, providing space and support to talk about harms and losses suffered, facilitating acceptance and recognition of the survivors' experience' and supporting the hopes and visions of the survivors. Among the hopes of the women she worked with in Indonesia, KP found that acceptance by community without prejudice, education and employment for their children, accountability of the perpetrators, and the guarantees it will never happen again were commonly expressed by many differently affected women. Independent documentation can also be fed into more formal processes, such as truth commissions, and with care for the rights of defendants and witnesses alike can contribute to formal judicial processes.

While participants agreed these types of independent activities to memorialize women's experiences are critical, they also stressed that formal, justice-based (including formal systems that incorporate customary systems if they conform to basic protections of rights) are critical and must be held to the standards of gender equality pursuant to CEDAW. They noted that informal processes and systems of support may often precede effective use of formal processes, and that formal justice rules on statutes of limitations (time limits according to which certain crimes cannot be prosecuted) must be reviewed to ensure fairness, not only to the accused, but also for victims whose marginalized status may have slowed their access to justice.

### **C. CEDAW Must Address Women's Rights In A Diversity Of Conflict Settings: When Does It Start And Does It Ever End?**

A second key theme identified by consultation participants was the need for CEDAW to

address the diversity of conflict settings and their varying impacts on women's rights. The participants, drawing from their own work and life experiences, emphasized that conflict occurs on a continuum; it may be imminent, ongoing, in a state of transition, or in the past. It was also recognized that these four stages can become cyclical when underlying roots of conflict are not addressed and that some situations never rise to the level of official conflict although serious rights abuses are taking place. Participants also noted that different levels of conflict can be present within a single country. Throughout all stages of conflict there are gender specific impacts that affect the substantive human rights of women. Participants articulated that the proposed new General Recommendation from CEDAW should address the full range of conflict settings and the multiple and connected stages of conflicts if it is to effectively protect the rights of women and girls.

The discussion of the diversity of conflict settings and stages led the consultation to identify three instances in which women and their rights are rendered invisible because conflict is not officially considered ongoing. First, participants spoke to the vulnerability of women and girls in settings where conflict is ongoing but unrecognized by the state, or where it is not grounded in one particular place (for instance within a single nation). Secondly, in transitional setting women often face continued vulnerability to rights violations, particularly by forces and actors not originally party to the conflict such as humanitarian actors, UN and regionally authorized peacekeepers. In transitional regimes of governance, as well as displacement and refugee camps, women are often excluded from key processes of decision making that intimately affect their lives. Finally, participants discussed the manipulation and exclusion of women in transition and post-conflict settings, wherein women are frequently excluded from peace negotiations; reconstruction efforts; disarmament, demobilization, and reintegration (DDR) programming; and other governmental processes.

#### **i. Women's Rights in Situations where Conflict is Unrecognized or Amorphous**

It was agreed that situations in which ongoing conflict is either unrecognized by involved states or is not based in one location create added barriers to the fulfillment of women's rights. Participants pointed out that where a state denies that conflict is ongoing it is difficult to demand that they address conflict specific impacts on women. The representative from Colombia

highlighted her country as an example of a conflict that deeply impacts women in ways that the state is unwilling to address. She stated that while there is significant violence and displacement in Colombia because of protracted conflict, the government does not officially recognize it as an internal conflict governed by the Geneva Conventions, and thereby seeks to avoid its obligations under international humanitarian and human rights law. A representative from Northeastern India added that conflict in her region of the country is also denied, and that the reputation of India as the world's largest democracy incentivized the state to suppress and cover up ongoing conflict.

In discussing the overlooked impacts of unrecognized conflict the participants also highlighted the deep economic and social effects of such settings on women. Again the conflict in Colombia served as an illustration of this concern. The Colombian representative informed the group that the unequal and discriminatory distribution of key resources and opportunities is a major cause and is exacerbated as a result of the conflict. Women are disproportionately affected by displacement, lack of access to land and natural resources, and lack of employment opportunities.<sup>11</sup> The other participants agreed that CEDAW and other sources of human rights law are not effectively used with regard to the economic issues central to conflict settings like that of Colombia and Northeastern India.

Participants also expressed concern that there are frequently outside actors involved that fail to acknowledge their role in conflict. Whether outside countries or groups provoke, fund or contribute to prolonging the conflict directly, or indirectly, the consultation representatives were concerned about the lack of accountability for such outside actors. Examples of superpowers like the US providing military and monetary support in ways that prolong or exacerbate a conflict, including worsening impacts on rights of women, were provided by several representatives, including those from Afghanistan, Colombia, and Indonesia. It was agreed that a new recommendation from CEDAW should address and clarify the obligations of both non-state parties (such as guerilla or insurgent groups, transnational or local businesses, humanitarian

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<sup>11</sup> The CEDAW project at UC Berkeley Law School has created a number of research files on the intersections of IHL and HRts Law as well as a model shadow report (using Colombia as the example) in which the potential impact of applying these specific legal regimes to key themes highlighted here (women in irregular combat forces, unequal material resource allocation etc) are explored. Please contact WILD for Human Rights for these materials, information at Appendix B.

actors), and states in addition to the state in which the conflict occurs who contribute to rights violations through funding, arms trading or other indirect methods.<sup>12</sup>

The consultation participants also voiced the concern that in situations where conflict is not rooted between two distinct geographic territories or two clear parties, the rights of women are frequently overlooked. In particular, discussion focused on the complexities of addressing the so-called “War on Terror.” As a set of activities, sometimes amounting to conflict, sometimes encompassing actions that restrict rights but that do not amount to war<sup>13</sup>-- that is not based in one specific location, it is difficult to ask states about their obligations to women in the context of that conflict.<sup>14</sup> Moreover, participants identified instances where the label “terrorist” in the context of this ‘war’ has been used by states to classify whole groups of people and to justify the denial of their civil, political, social, cultural and economic rights. Especially troubling were examples where women were treated as proxies for family members accused of terrorism, and were denied their rights without being considered on an individual basis. The participants acknowledged the politically and ideologically charged nature of the term “terrorist,” and asked that CEDAW highlight the risks involved in its application, with particular attention to its gendered aspects. Whatever its motivation, the application of the term may silence and prevent certain groups and individuals from participating in civil and political society. This impact is even more devastating for women, who have less agency and power in refuting such accusations, or in separating themselves from the activities of family or community members, and who already experience routine discrimination in the civil and political spheres.

## **ii. Women’s Rights and Continuing Harms during Transition: New Forms of the Same Struggle**

It was generally agreed that when a state is in the process of transitioning out of conflict the gender specific needs of women, and the obligation to promote gender equality broadly, are inadequately addressed. Participants acknowledged that violent harms associated with ongoing conflict are a primary concern of their work. However, they strongly called for equal attention to

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<sup>12</sup> See CEDAW project at UC Berkeley case materials. Please contact WILD for Human Rights for these materials, information at Appendix B.

<sup>13</sup> See note 3 above on gender and the impacts of the war against terror. There is a large body of human rights work on the rights impacts of the “war against terror” including the work of several treaty bodies and independent experts of the Human Rights Council.

<sup>14</sup> See, eg. United States and Gender, National Security and Counter Terrorism Project at: <http://chrgj.org/projects/gct.html>

women's other civil, cultural, economic, social and political rights, particularly the need to address violations that do not occur during active hostilities. Participants pointed out violence and other physical harms suffered during conflict frequently lead to social, economic and cultural disempowerment during transition and in post-conflict settings. The connection between these two types of harms must be acknowledged by CEDAW and its signatories.

The participants of the consultation resoundingly expressed concern over the exclusion of women from peace negotiations leading to transition, and from governmental reconstruction efforts after transition. Because women are denied access to these processes, they are less able to advocate for their needs and experiences and are unable to shape a society that will respect their rights moving forward. Instead, those who are given access to negotiation and reconstruction processes are allowed to make compromises affecting women's rights without being held accountable to women themselves. In her remarks, Savitri Goonesekere made clear that beyond the question of access or the option of participation, the goal must be one of women actually sitting at the table actively and meaningfully participating in decision-making and planning. Most participants agreed that even where women are involved in peace and reconstruction discussions, their presence tends to be largely symbolic or tokenistic, leaving women's rights concerns, larger power shifts and social transformation necessary to remedy abuses of women's rights, unaddressed in any substantive way.

The consultation's setting in Sri Lanka, and the numerous activists engaged in defending women's human rights in that setting, provided a powerful example of a transitional setting in which women face on-going violations of their rights. Several representatives from Sri Lanka spoke about the affect of persisting low-intensity conflict, as well as rights violations of women that occur as the state attempts to unilaterally reassert "normalcy" and peace, particularly in the context of a transition occurring without the benefit of a politically negotiated settlement to the conflict. Other representatives from locations such as Indonesia and Sudan agreed that the state's understanding of "normalcy" is one that is inherently inequitable. There is great pressure placed on women to return to traditional gender roles as a symbol of the nation's healing after the disruption of war. It was acknowledged that some women may themselves want to return to traditional roles such as that of mother and wife. However, the delegates emphasized the



importance of the space for meaningful decision-making, both immediately after conflict and moving forward in the process of establishing a society with gender equality. Representatives noted that women's needs and goals will change, and their ability to voice their new opinions should also be understood as part of on-going politics. This includes also recognizing that women's voices are not unified in all aspects of politics, and may take opposing positions in these processes. As guaranteed by CEDAW's article 7 and 8 in particular, all states and entities facilitating peace processes must take steps to ensure that women have the right to take part in decision making at all levels: because barriers in the home lead to barriers in public life, special steps may be needed post conflict to ensure women's voices.

The context of transition presents further challenges because states and international actors often assume that an official cessation of hostilities also results in the cessation of major human rights violations. In discussion however, numerous participants identified abuses by peacekeepers, humanitarian aid workers, and other actors not directly party to the conflict, as an ongoing concern in transitional and post-conflict settings. Developing a solution to these types of abuses is particularly challenging because the legal duties that bind these actors have not been consistently well articulated<sup>15</sup>.

Even where activists can usually safely and effectively raise concerns with the state about its obligations to protect and fulfill the terms of CEDAW, it is much more complicated to do so with regard to parties not controlled or governed by the state. The lack of clear accountability for these types of actors was a major concern of the participants in this working group. They advocated for CEDAW to clarify that states are obligated to ensure that persons within their control are protected from rights violations at the hands of all parties, including peacekeeping troops or humanitarian aid agencies acting under the invitation of the host state. Furthermore, the participants sought clarification and additional research on the framework through which states parties could be held accountable for violations against women committed by their uniformed services and other agents (including military contractors) acting outside of their own state.

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<sup>15</sup> Participants noted the various barriers, including Status of Forces agreements (SOF) and other legal shields blocking accountability for forces contributed through UN, multilateral or bi-lateral agreements. Examples from the Philippines, Kosovo and the Congo were cited.

### **iii. Women's Rights in Post-Conflict Settings: Where is the Peace after the War?**

The lack of consideration for women's rights in the implementation of post-conflict policies was a third major theme that developed during the discussion of the diversity of conflict. Many representatives spoke to the lack of involvement of women on all sides in political decision making after conflict, as well as the lack of substantive participation in peace negotiations and other key peace making policies like demobilization, disarmament and reintegration (DDR) programming. Advocates for women's full participation in political and governmental decision making strongly urged all the participants to integrate Security Council Resolution 1325 into their work and to use it in conjunction with CEDAW to demand substantive equality in such participation. It was agreed that the proposed new General Recommendation on the issue of conflict would be greatly strengthened in referring to 1325 and other existing legal sources.

Representatives noted that even when women are formally included in these processes, they are not given substantively equal access and power. The representative from Afghanistan provided the example of women representatives in government and in negotiations being used as pawns by male family or community members to promote their own agendas. Women's involvement in decision-making can be merely a token presence as women are often not trained or otherwise prepared and authorized by power brokers even on their own side, to become fully and meaningfully engaged in the process. The group as a whole agreed that without substantive equality in post-conflict policies and activities, women were likely to suffer further marginalization. Additionally, the cyclical nature of this marginalization was identified in that women who lack political agency in post-conflict settings would be more vulnerable to violations of their other human rights.

The issue of disarmament, demobilization and reintegration (DDR) was one that many women were particularly concerned about. As mentioned in the previous section, women's roles within armed forces are frequently unrecognized, either because they clash with traditional mores, or because they are irregular roles that do not come with uniforms, guns or other recognizable markers of combatants. Numerous participants identified the failure to tailor DDR programming to the needs of women as a source of marginalization that results in lack of access

to equal health, psycho-social, educational, and vocational services and opportunities.

It was further emphasized that women must be recognized and allowed to participate in DDR, and also engaged in the design of DDR programs. If women having diverse roles in the conflict are not consulted about their needs and goals for DDR, they may be forced to participate in processes that do not actually benefit them. For example, some women may wish to return to traditional familial roles after being affiliated with the armed forces. Others, however, may have joined the armed forces to escape situations in their families or home environments and may wish to continue pursuing a career within the armed forces. Some may not want to “reintegrate” into their home communities, preferring to resettle in other communities, including moving to urban settings. Additionally, many women feel they have gained skills and autonomy during their time with armed forces. Such women, whether former combatants or not, should be allowed to capitalize on any skills or opportunities that come with the added burdens and responsibilities of conflict: including acting as heads of household, holding employment in traditionally male sectors, and taking part in local, national and international decision making processes.

These examples do not capture the group’s full discussion about the need to consider women’s rights in imminent, transitional and post conflict settings, in addition to that of ongoing conflict. However they are illustrative of places where women’s roles, experiences and needs are marginalized because of the type and stage of conflict in question. The participants felt that a new General Recommendation from CEDAW could highlight these often overlooked issues and emphasize that women’s rights must be considered and respected throughout the trajectory of a conflict.

#### **D. Lack of Standing, Diaspora Populations and Displacement, Statelessness and Occupation**

Throughout the course of the Consultation, participants discussed issues of gender and statehood extensively, returning to the importance of the broader democratic context on women’s rights. Discussion drew attention to the particular issues facing women who are actually or functionally stateless, internally and internationally displaced, and living in situations of belligerent or prolonged occupation.

### **i. Lack of Status and Legal Standing as Obstacle to Redress and Reparations**

Women in conflict settings are often impeded from seeking the appropriate methods of redress or reparations when their legal standing is questioned. Most commonly, women in conflict-affected settings lack status because they do not have the necessary identity documents either because the state has failed to recognize their legal (for instance national, marital) status and/or because of particular gender-specific laws which bar them from accessing services and benefits.

Participants noted many instances where women are unable to claim title to land post-conflict because they lack the necessary land titles and their husbands or male relatives may no longer be alive to support or verify their right to the land. Participants explained that many post conflict resettlement schemes require land titles before providing resettlement and reparation and thus lack of documentation can have serious ramifications in proving or acquiring title. Participants suggested that providing for joint ownership of land between a husband and wife can ensure women have a legal right in their land. Traditional systems of title and communally held lands are often negatively affected by land redistribution programs. Some participants noted that such new legal systems can be problematic because they do not take into account previously matrilineal land systems and instead impose a new ‘modernized’ system in which women lose certain rights. A participant from East Timor explained that land issues may be made worse by the occupation by foreign powers that impose different land law systems and create conflicting title systems for the same plot of land, leaving parties unsure which title will be recognized by the government. This can be especially troublesome when communal land systems are no longer recognized, leading to great tension between groups. Due to government corruption or intentional political intervention, land can be taken from one community to favor another community which is more closely aligned with those in power: in this re-distribution, women’s restricted access to land is a product of inter-secting forces, some gender specific and some related to other political struggles.

Lack of identity documents and legal status often prevent women from seeking redress and reparation through state legal systems. Migrants, refugees, and trafficked persons often do not

possess documentation or are stripped of their documentation in the new setting and as a result are marginalized and labeled “illegal immigrants” or “criminals.” This lack of status has a tangible impact on the protection and realization of right as such persons. Participants noted irregular migrants are unable to seek protection from the authorities out of fear, unable to register the births of their children and their marriages, and lack access to health care services and the courts and legal systems in the new setting. A Burmese participant explained that Burmese refugees in Thailand must be able to access Thai courts and hold Thailand accountable for implementation of CEDAW in the context of Burmese refugees and migrants. Participants expressed their concerns that women who were forced to migrate because of conflict are often left behind when it comes to legal relief because of this lack of standing. In her presentation at the end of the second day, Shanthi Dairiam of IWRAW-AP emphasized the need to consider the complementarity of international and national legal provisions, such as those regimes for refugees in countries where no national provision exists for legal immigration on the basis of refugee status. Only by bringing national law and policy in line with international norms, would legal standing be afforded to the refugee population in question and thus the legal standing to address the issues facing that community. Participants agreed that legal recognition by the state of refugees and other ‘unauthorized’ migrant populations was a precursor to the realization of women’s rights.

## **ii. Occupation and Statelessness: At the Intersection of Struggles for Self-Determination and Protection**

Concerns regarding occupation and the rights owed to women in occupied territories were important issues raised throughout the course of the Consultation. In light of the interrelatedness of the democratic context and the fulfillments of rights for women and girls, the issue of self-determination was bound up with the question of equality for women. All participants acknowledged that serious gaps in protections in the context of occupation exist but that demanding accountability raised complicated questions. An advocate working with the Palestinian community explained that while Israel has ratified CEDAW and is subject to review by the Committee, it denies it is accountable for its actions under the Convention in the occupied territories. While legal arguments exist that Israel is accountable under its human rights

obligations in all contexts, including occupation, the state of Israel denies that accountability.<sup>16</sup> While a need for accountability was a primary concern, participants struggled with the question of how to hold an occupying state accountable for the rights of those in the territories being held without legitimizing an occupation.

It was acknowledged that the issues of occupation and self-determination need further investigation<sup>17</sup> and the participants began strategizing on how to address such a complex issue both individually and in partnership. Participants agreed that in framing the international legal obligations of an occupying power under CEDAW, they had to be careful not to legitimize the occupation and to be explicit regarding this concern in the context of any such human rights advocacy. Participants discussed ways in which shadow reports and other advocacy tools could be used strategically to call for accountability by occupying states. For example, in the Palestinian context, participants discussed coordinating the writing of two shadow reports, one as Israeli citizens and one as Palestinians, to raise the issues from both perspectives. Other advocates suggested writing a single report but that was more explicit about the political context in which the rights of women were being addressed. There was consensus that all efforts to seek accountability from occupying states had to be done with an eye to the over-arching goal of self-determination.

### **iii. Increased Vulnerability due to Displacement and Migration**

The dangerous consequences of migration and displacement were important concerns amongst the participants. Discussions focused on how women become more susceptible to violence and exploitation by state, non-state, and international actors once they are displaced due to conflict.

State military forces were identified by participants as perpetrators of exploitation and violence against women as well as failing to fulfill their duty to protect women from perpetrators acting within their borders. Participants notes that women and girls face threats of sexual

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<sup>16</sup> The important question of human rights protection under the laws of occupation contained in IHL is a key point for a future general recommendation. The literature on this question is growing, but very little of it is gender-sensitive. See, eg, F.J. Hampson, "The relationship Between International Humanitarian Law and Human Rights Law from the perspective of a Human Rights Treaty Body", *International Review of the Red Cross*, Volume 90, No. 871, (September 2008).

<sup>17</sup> CEDAW's preamble addresses the question of the need to ensure self-determination and to end instances of national occupation quite forcefully.

violence, rape as a strategy during war, torture, abductions, forced prostitution, forced recruitment into militias and other combat forces, slavery, including sexual enslavement, mutilation, trafficking into many sectors including prostitution, domestic and agricultural work, and other instances of violence by the military during conflict. Women displaced due to conflict were at particular risk of these abuses because they frequently lack familial and community protection and often national legal status. The participants discussed the importance of instituting gender sensitive military training to equip male soldiers with a better understanding of violence against women and emphasize their obligations to prevent and protect women and girls from such violence.

Participants pointed out that non-state actors, including international actors, commit similar abuses against women. Non-state combatants were identified by participants as equally culpable as the state military in terms of violence and sexual violence against women. Moreover, a Croatian representative, and others agreed, it is international actors and peacekeepers that were commonly known to be customers of a highly militarized and exploitative sex sector post conflict in the Balkans, as well as culpable of acts of gender based violence. Women in conflict settings are often forced to work in dangerous or irregular or informal employment situations and face labor exploitation due to a lack of employment options, few labor regimes regulating their rights, and/or their unauthorized status in another country. Many women are only able to pursue informal types of labor, such as domestic work, which leave them vulnerable to exploitation as most states do not have laws that specifically protect the rights of domestic workers. Women working in the sex sector, whether voluntarily or involuntarily, are doubly marginalized as their work is often categorized as criminal and therefore they are fearful of seeking legal protections and are also susceptible to sexual violence by state officials. The participants discussed the need for a code of conduct that could be enforced and which would bar certain types of exploitive behavior by international actors.

States also often fail to prevent and punish abuses and other exploitative acts by non-state actors within their borders. Participants also noted that many states either have corrupt officials who themselves traffic women and girls, or fail to stop, or indirectly participate in the activities

of ‘travel facilitators,’ labor agents and others who engage in trafficking<sup>18</sup>, who offer women various forms of employment , but move them, with force, fraud or coercion and other abuse of power into positions of servitude, forced labor or other positions of exploitation, in prostitution, domestic, agricultural or other sectors of work. Some girls and women experience sexual and other kinds of slavery, as defined in the International Criminal Court.<sup>19</sup>

#### **iv. Seeking a Meaningful Unified Voice in the Diaspora for Migrants, Refugees, and the Displaced**

The participants at the Consultation also discussed the barriers that face migrants and refugees as members of a diaspora in raising issues of common concern. Because CEDAW imposes obligations on states individually, problems arise when women of a particular community affected by conflict are dispersed across multiple states. Given that CEDAW operates on a state by state basis, participants grappled with how CEDAW might address the concerns of a community residing in multiple states? Some of the participants present were part of organizations that works across borders with diaspora populations to create regional and global networks and agreed that women’s rights organizations played a key role in facilitating this process of linking voices and concerns. While particular issues can be raised by advocates in various countries where affected women reside, participants acknowledged the need to provide a platform for women dispersed across borders due to conflict.

This conversation was linked to issues of freedom of expression and association and access to the media, all of which are challenging for those living in refugee camps, internally displaced persons (IDP) camps, and in foreign or occupied lands. Participants agreed that women’s rights organizations had to incorporate such concerns in to reporting and other advocacy efforts and demand that state parties implement measures to ensure the fulfillment of the right to freedom of

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<sup>18</sup> Article 6 of CEDAW addresses trafficking. The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime can be found, with new guidelines for emphasizing human rights protections, at: [www2.ohchr.org/english/law/protocoltraffic.htm](http://www2.ohchr.org/english/law/protocoltraffic.htm)

<sup>19</sup> The International Criminal Court’s Rome Statute inclusion of enslavement and sexual slavery can be found in Article 7: Crimes against humanity (c) Enslavement; and (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced as well as Article 8, war crimes (for international and non-international conflicts) see: <http://www.icc-cpi.int/Menus/ICC/Legal+Texts+and+Tools/Official+Journal/Rome+Statute.htm>



expression. Participants raised several examples of possible measures, including the need to make safe meeting spaces available to women living in refugee and IDP camps and to reform policies which discriminate against certain ethnic or cultural groups accessing the media. Such positive measures within states would complement the regional and cross-border efforts of women's rights organizations and together begin to link the voices of women displaced by conflict.

#### **E. All Parties to the Conflict: Defining the Obligations of States for Conduct and Policies Effecting Rights Extraterritorially**

Participants identified the need to recognize the diversity of actors responsible for rights violations in conflict and post-conflict settings and to find ways to hold such actors responsible, whether they act within their state of origin or extraterritorially. CEDAW, like most human rights treaties, was written with the paradigm of a single state actor as rights violator or guarantor in mind. *However, participants stressed that such a straightforward paradigm cannot effectively cover contemporary realities. Participants emphasized that in the context of globalization as the world becomes increasingly interconnected through trade, business, and aid, conflict settings inevitably involve far more actors than the state in which hostilities are geographically located.* Participants identified four categories of actors/actions that they see creating rights violations and gender inequality in conflict and post-conflict settings: state actors, non-state actors, international organizations, and financial infrastructures such as international lending and trade agreements. Participants urged that CEDAW and other treaty bodies must find ways to link the actions of diverse actors to the legal obligations of states parties in order to more completely address rights violations in these increasingly globalized settings.

State actors remain major contributors to rights violations in conflict, transition and post-conflict settings, both in direct and indirect ways. Participants introduced a wide range of examples illustrating the various roles of states in conflict. The most straightforward example is the instance in which a state is the primary party to a conflict, or exerts its control within its own territory in a way that violates its obligations under CEDAW or other human rights treaties. Participants also discussed examples that are less well-addressed in treaty body work, such as that of states having a more distant but none the less grave impact on conflict, including through

troop or arms contributions or bilateral militarization policies. Participants expressed an interest in increasing the examination and documentation of these types of state actions, and reporting to CEDAW on those instances that lead to rights violations generally, with an eye to increased gender inequality.

In addition to state actors involved directly and indirectly in active hostilities, participants also discussed the roles played by states in post-conflict and transition. In particular, the participants felt it was important to remind states engaged in negotiations or in peacekeeping that, if they are signatories of CEDAW, they must comply with their obligations under the treaty even where they are acting outside of their sovereign territory. They emphasized that such states should be reminded of the obligation to afford women equality and meaningful participation in the negotiation process and to consider the impacts of peacekeeping efforts on the rights of women and girls. Participants were hopeful that even in cases where a state party to CEDAW was hosting peace talks or otherwise facilitating negotiations, it could be encouraged to exert pressure on the other states involved to take steps to protect the substantive equality of women in the process. Representatives also expressed concern over the pattern of granting amnesties to state actors without including women from the various affected parties in the decision making process. Given that women on all sides often face severe rights violations during and after conflict, the participants felt strongly that amnesties cannot be legitimately granted without diverse women's input.

Non-state actors were the second major group identified as responsible for human rights violations in conflict and post-conflict settings. CEDAW is clear in its stipulation that states are responsible for the acts by both public (state) and private (non-state) entities, and that a failure to protect women and girls from rights violations caused by non-state actors is a failure to meet the obligations of the treaty. In her presentation, Savitri Goonesekere urged that states parties be held accountable for inaction and a lack of 'due diligence.' While the Geneva Conventions address non-state belligerents in addressing internal conflict, Goonesekere reminded participants that IHL is not as encompassing of gender equality across a wide range of rights as CEDAW, and therefore advocates should help strengthen and utilize CEDAW's application in the conflict context.

Non-state armed groups, such as militias and guerilla forces (and groups operating under cover of informal state sanction, such as paramilitaries) remain of primary concern to advocates of women's rights during conflict. However, the participants again expressed a need to expand the scope of rights concerns related to non-state actor beyond armed groups. The participants felt there was an urgent need to examine players such as multinational and national corporations, as well as the interplay between national, regional, and international actors. Many representatives had examples of exploitation by non-state actors, such as multinational corporations that exploited labor conditions in conflict settings, assisted with the manufacture of arms or other resources required for conflict, or used the guise of "development" to continue enriching themselves and parties fomenting conflict, despite the clear link to conflict and its accompanying violations of women's rights. Participants wanted more clarity on what the legal basis might be for trying to hold these actors to account.

Participants were also concerned about the lack of clear standards and useable accountability mechanisms for addressing the actions of international organizations during and after conflict. Where UN Agencies, humanitarian aid organizations and other internationally constituted bodies play a role in conflict or reconstruction, the international standards and national laws which might govern their actions are not fully developed, and how they can be made accountable for the protection and fulfillment of women and girls' rights has not yet been elaborated and institutionalized. Numerous representatives gave examples of women being exploited by humanitarian workers, including their offering food, security or other resources (both supplies already guaranteed to local populations and additional resources) in exchange for sexual services. Peacekeepers were also identified as a group that has perpetrated abuses in numerous settings. Representatives were frustrated that peacekeeping troops were frequently sanctioned and deployed under UN mandates but constituted of troops from countries with troubling human rights records and lax or non-existent accountability processes. In effect, the troops are exported along with their practices of violating the rights of less powerful communities, and in particular the rights of women and girls.

Participants agreed that the most overlooked type of "actors" involved in conflict are actually financial arrangements and structures that can fuel and shape conflict while blocking

efforts by civil society organizations to advocate for the full protection and fulfillment of human rights. The representative from Fiji presented a case study of her country to illustrate how deeply financial arrangements like international monetary loans and trade agreements limit the ability of women to hold governments to account for human rights violations. In the face of Fiji's tumultuous political history, women's rights activists and human rights groups have sought ways to increase the pressure for democratization. After the most recent coup, the military leadership was attempting to negotiate a loan from the EU to reinvigorate the sugar industry, upon which a great deal of its ability to stay in power depended. Women's groups were able to convince the EU to condition its loan upon the Fijian government's compliance with certain benchmarks showing progress towards a more open society, including lifting restrictions on freedom of movement and eventually holding elections. But instead of complying with the EU's demands, Fiji negotiated a separate agreement with India, and was able to receive the needed loan without the conditions of the EU. Nearly simultaneous to the brokering of the loan from India, Fiji was negotiating a free trade agreement with New Zealand and Australia despite the fact that New Zealand had held negotiations prior to the coup to try and prevent the collapse of the government. Women's rights advocates condemned the trade agreement and expressed concern over the clear conflict of interest present for New Zealand. Based on this case study, participants considered how women's rights groups might work together strategically, such as those from Fiji and Australia, to write reports and shadow reports demanding accountability from their own country for its role in other countries which adversely affects women's rights.

Participants also expressed concern over the impacts of international financial institutions such as the International Monetary Fund (IMF), the World Bank, the Asian Development Bank, etc. in conflict settings. Many representatives expressed frustration at the lack of transparency in funding, budgetary and investment strategies of multi-lateral financial institutions, leaving them unable to affect their governments' commitments, and yet negatively impacted by those same commitments.

The fact that trade and over-seas loans were increasingly concluded by conflict-affected states with countries, such as China, for whom advocacy and accountability strategies were not yet developed also presented huge challenges. Sri Lanka was presented as an example of a

conflict that has been sustained by international financial structures. Even when the EU removed trade preference status from Sri Lanka because it did not meet certain human rights standards, countries like China, India, Japan and entities like the IMF and the World Bank provided sizeable loans to Sri Lanka without any consideration of the government's human rights record or the loan's potential impact on rights. It was broadly acknowledged that international financial infrastructures, including trade and loan agreements, are key factors in funding conflict or supporting repressive regimes or discriminatory practices on conflict affected communities including women. The participants expressed an urgent need for further research and analysis as to how such diverse infrastructures and processes (multi and bi-lateral trade and aid) can be linked to the obligations of states parties under CEDAW to protect individual human rights.

## **F. Strategies to support the work with CEDAW**

### ***i. Role of CEDAW***

The Consultation focused heavily on both the current role of CEDAW and its potential role in addressing the rights of women in conflict settings through the proposed new General Recommendation. The participants concurred that CEDAW and its framework of obligations should be central to defining state obligations to promote gender equality in conflict settings. Savitri Goonesekere emphasized the importance of CEDAW's interaction with other treaty bodies and sources of international law as well as the central role of women's groups in that process.

She spoke about the importance of looking to UN Security Council Resolutions 1325 and 1820 and bringing them within the CEDAW framework when trying to incorporate gender sensitivity into women's human rights advocacy. Goonesekere emphasized the intersectionality of rights and that CEDAW, particularly Article 5 and Article 16, has emphasized the importance of harmonizing, deconstructing, and making sure diversity in religion and culture does not undermine this core concept of substantive equality. More attention to developing new applications of Article 5 on gender stereotypes in particular on engaging with tradition and religion as the bases of law was cited in discussions following her presentation.

Goonsekere emphasized the three positive processes that make CEDAW the appropriate

instrument to address women in conflict: 1) the reporting process with the help of shadow reports to raise important issues; 2) the process of drafting a General Recommendation provides an opportunity to explain and provide detailed guidelines on the convention; and 3) because CEDAW can be leveraged to reinforce and further the gender equality guarantees in all human rights standards.

## ***ii. Supporting the work on a New General Recommendation to be Issued by CEDAW on Conflict***

The Consultation drew to a close discussing different methods to advocate for a new General Recommendation to be issued by CEDAW on women and conflict. This discussion included future outcome documents; roles and timelines; expanding the network of involved advocates, especially at regional level; identifying potential partners from under-represented regions, particularly Latin America and Africa; and working with advocates from countries which have sitting CEDAW Committee members. Strategies for strengthening the rights of women and girls under CEDAW after the Consultation were discussed on three levels: international strategy, national strategy, and regional strategy.

The participants discussed a timeline for future output documents. The Berkeley Law team will make the first draft of documents which will be submitted to the Committee to support their work. Drafts of these documents will be made available to all consultation participants and will be revised heavily in light of feedback and comments provided. Of primary importance, is to keep communication among participants open so that outcome documents reflect the participants' insights. The final documents are to be presented to CEDAW Committee members during an informal meeting with members of the coalition.

## ***iii. Strategies for Improving Rights of Women and Girls under CEDAW after the Consultation***

### **a. Country Case Studies**

Participants expressed a desire to create country case studies. One participant agreed to develop a guide for writing case studies which address the issues of women and conflict. Dates were agreed upon for participants to provide case studies of their countries. Case studies will

include as appropriate some of the issues raised in the consultation, such as global non-state actors, peacemaking, and traditional practices.

#### b. Shadow Reports

Shadow reports were identified as effective vehicles for highlighting neglected issues, and therefore the group agreed they should be an important part of post-Consultation strategies. Shadow reports should incorporate substantive issues raised during the consultation as well as incorporate references to other international mechanisms, such as Security Council resolutions. Participants will collaborate on the development of the shadow reports to address the prominent issues from the Consultation and target countries who are scheduled for upcoming CEDAW review. The Consultation planning committee explained that some of the participants present would have sitting CEDAW members on the Committee in 2011. The planning committee asked participants to communicate and advocate with the CEDAW Committee members in their countries so that they will be receptive to the idea of a new general recommendation on conflict. Participants agreed that shadow reports can and should be used in other areas as an advocacy tool beyond the CEDAW review process.

#### c. Outreach to other Advocacy Groups on Issues of Common Concern

Throughout strategic discussions, participants emphasized the importance of collaborating with other advocacy groups, including those not represented at the Consultation. Participants discussed the engagement of various organizations and regional networks to expand the network involved in the advocacy with CEDAW around women and conflict. Participants also stressed the importance of strategic partnering where common interests in a country (i.e. country in conflict and a donor state to that country) could coordinate reporting and other advocacy efforts.

### **IV. LOOKING AT OTHER UN AND GLOBAL MECHANISMS**

The participants discussed working across other UN and global mechanisms, such as Security Council Resolution 1325, and connect those mechanisms with CEDAW advocacy efforts. With regard to Security Council Resolution 1325, groups discussed that national efforts would consist of engaging government entities preparing official reports and pushing governments to continue to adopt national action plans.

Lastly, the group discussed complex issues that call for further research. Participants identified issues of funding and financial architecture, the accountability of non-state actors (i.e. multinational corporations), and states engaged in extraterritorial activities (i.e. immunity agreements) as issues where they needed more information and resources to better advocate. A vast majority of participants agreed that these complex issues were vitally important to understanding the impact of non-state actors on women's rights in conflict settings.

## **v. CONCLUSION: SUMMARY AND NEXT STEPS**

In conclusion, the participants of the Consultation came to a consensus on a multifaceted approach that would strategically support the work of CEDAW. This approach includes the creation of output documents to aid the CEDAW Committee in creating a new General Recommendation, production of case studies and shadow reports as part of the CEDAW reporting process, reaching out to other advocates within region and with common strategic interests to work in collaboration, and the importance of looking at other sources of international law and working across other UN and global mechanisms. The future work of the participants will be linked to regional, national, and international realities.

## **APPENDICES**

**Appendix A:** Agenda

**Appendix B:** List of Participants

**Appendix C:** Consultation Background Paper



## Appendix A: Agenda

### Global Consultation on the Application of Women's Human Rights Framework on the issues of Women affected by Conflict Colombo, 15-17 October 2010

| <u>Date</u>        | <u>Time</u>   | <u>Session Particulars</u>  |
|--------------------|---|---|
| Friday<br>15 Oct   | 09:00-09:45   | <b>Welcome and Introduction</b>   |
|                    | <b>09:45-10.30</b>  | <b>Session 1: Setting the Context</b>   |
|                    |   | Overview of conflicts and the challenge to women’s human rights<br>Why is CEDAW relevant to address issues of women affected by conflict?<br>Introduction to the consultation agenda  |
|                    | 10:30-11:00   | Tea Break   |
|                    | <b>11:00-12:30</b>  | <b>Session 2: Current Legal Framework for Rights of Women affected by Conflict</b>  |
|                    |   | The current legal framework related to conflict situations: obligations, roles and gaps<br>What are the obligations of – respect, protect and fulfill of State and non-state actors in the context of conflict?<br>Role of the UN and other human rights bodies/mechanisms in realization of rights of women affected by conflict |
|                    |   | Q&A   |
|                    | 12:30-13:30   | Lunch   |
|                    | <b>13:30-14:30</b>  | <b>Session 3: Understanding Conflicts from Women’s Experiences</b>  |
|                    |   | Region- and conflict-specific presentations contextualizing how conflicts develop over time and space; where women are positioned as participants, victims and advocates; and the challenges of peace-building/post-conflict reconstruction   |
|                    | Summary & synthesis   |   |
| <b>14:30-15:30</b> | <b>Session 4: Recognizing the Diversity of Women/Girls Affected by Conflict</b>   |   |
|                    | Scope and characteristics of specific categories of rights-holders/women&girls affected by conflict, duty bearers/perpetrators of abuse, and state agents |   |
|                    | Synthesis   |   |
| 15:30-15:45        | Tea Break   |   |
| <b>15:45-17:00</b> | <b>Session 5: Assessing the Global Players and the Impact of Financial Architecture of Conflict, Post-Conflict, and Reconstruction on Women and Girls</b> |   |
|                    | Discussion  |   |

|                            |                     |   |
|----------------------------|---------------------|---|
| <b>Saturday<br/>16 Oct</b> | <b>09:00-9:15</b>   | <b>Session 6: Review of Day 1</b>   |
|                            | <b>09:15-10:15</b>  | <b>Session 7: Exploring Substantive Issues</b>  |
|                            |                     | Trigger presentation  |
|                            |                     | Discussion in groups (conflict and post-conflict) to answer common questions about the impact on women's rights in four key areas and the barriers women face in addressing them  |
|                            |                     | <ol style="list-style-type: none"> <li>1. Health and Education</li> <li>2. Housing and Land, Employment and Livelihoods</li> <li>3. Food Access and Scarcity</li> <li>4. Freedom of Expression &amp; Association</li> </ol>   |
|                            | 10:15-10:30         | Tea Break   |
|                            | <b>10:30-11:30</b>  | <b>Report Back &amp; Synthesis</b>  |
|                            | <b>11:30- 12:30</b> | <b>Session 8: Exploring Substantive Issues (continued)</b>  |
|                            |                     | Trigger presentation  |
|                            |                     | Discussion in groups (conflict and post-conflict) to answer common questions about the impact on women in four key issues and the barriers women face in addressing them, including in accessing justice and rehabilitation.  |
|                            |                     | <ol style="list-style-type: none"> <li>1. Violence and Sexual Violence</li> <li>2. Forced Marriage &amp; Other Traditional Practices</li> <li>3. Migration, Trafficking and Exploitation</li> <li>4. Displacement, Relocation and Return, and Urbanization</li> </ol>                 |
|                            | 12:30-13:30         | Lunch Break   |
|                            | <b>13:30-14:30</b>  | <b>Report Back &amp; Synthesis</b>  |
|                            | <b>14:30–15:30</b>  | <b>Session 9: Exploring Substantive Issues (continued)</b>  |
|                            |                     | Trigger presentation  |
|                            |                     | Discussion in groups to answer common questions about women experiences and agency in the context of four key issues.   |
|                            |                     | <ol style="list-style-type: none"> <li>1. Recruitment &amp; Issues Specific to Female Combatants</li> <li>2. Disarmament, Demobilization &amp; Reintegration</li> <li>3. Representation of Women in Peace Negotiations and Reconstruction</li> <li>4. Transitional Justice</li> </ol> |
|                            | 15:30-15:45         | Tea Break   |
|                            | <b>15:45-17:00</b>  | <b>Report Back &amp; Synthesis</b>  |

|                          |                    |  |
|--------------------------|--------------------|--|
| <b>Sunday<br/>17 Oct</b> | <b>09:00–11:00</b> | <b>Session 10: Women's Human Rights Framework<br/>on the issues of Women affected by Conflict</b>  |
|                          |                    | Presentation<br>Discussion   |
|                          | 11:00–11:15        | Tea Break  |
|                          | <b>11:15-12:30</b> | <b>Session 11: Moving forward: Planning and Strategy</b>   |
|                          |                    | <ul style="list-style-type: none"> <li>• Adoption of framework</li> <li>• Identification of Additional Issues not Raised</li> <li>• Outcome Documents &amp; Case Studies</li> <li>• Next steps</li> <li>• Roles</li> </ul> |
|                          | 12:30-13:30        | Lunch  |
|                          | <b>13:30-15:30</b> | <b>Session 12: Moving Forward (continued)</b>  |
|                          |                    | <ul style="list-style-type: none"> <li>• Time frame (short and long-term)</li> <li>• Follow-up Communication Plan</li> <li>• Future Meetings</li> </ul>  |
|                          | 15:30-15:45        | Tea Break  |
|                          | <b>15:45-17.00</b> | <b>Summary of Strategic Plan, Reflection, and Closing</b>  |



## Appendix B: List of Participants

### Global Consultation on the CEDAW Framework and Women's Rights

13 – 14 October, 2010 (Planning meeting); 15 – 17 October 2010  
Colombo, Sri Lanka

#### Organised by

International Women's Rights Action Watch (IWRAP) Asia Pacific  
in collaboration with Women and Media Collective (WMC)

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## Appendix C: Consultation Background Paper

### Background paper for Consultation on Women Affected by Conflict

#### Introduction

The 21<sup>st</sup> century has seen an increase in the numbers of conflicts around the world, as well as changes in the nature of these conflicts. In all regions, we see the expansion of internal conflicts and civil wars, generated by disputes relating to political power, issues of self-determination, autonomy and independence and disputes relating to control over natural and human resources.<sup>20</sup> Many of these conflicts pit security forces of the state against armed militant groups, with intra-community conflicts that pit community against community taking place as well. All reports of contemporary conflict point to the continued targeting of women's bodies and freedom by all parties involved in conflicts and an upsurge in the types of violence and abuse of women in conflict situations.

There is also a steep increase in the numbers of refugees and asylum-seekers worldwide as well as in the numbers of internally displaced persons in conflict affected countries. In June 2010, the UN Refugee Agency, UNHCR, reported that 43.3 million people were forcibly displaced worldwide at the end of 2009, the highest number of people uprooted by conflict and persecution since the mid-1990s. Of this number, 26 million fall into the category of the internally displaced, or those who have remained within national borders despite having to flee their homes due to conflict or persecution. 50% of the world's IDP population is female; 47% of all refugees and 40% of all asylum seekers are women.<sup>21</sup>

The changing nature of conflict challenges the existing frameworks of international human rights law and humanitarian law that can protect the rights of persons living in conflict affected areas. For example, the increased involvement of non-state actors including armed militants and extremist militias in conflicts has challenged the existing focus of international human rights law on state obligations to protect promote and fulfil the rights guaranteed in various international and legally binding treaties and agreements. The concept of 'due diligence' has been brought to the foreground by several key international human rights mechanisms in order to extend the framework of state obligation to include the obligation of the state to protect its citizens from rights violations committed by non-state actors, to investigate and punish such acts of violence and to provide compensation. The specific impact of conflict on women and on other marginalized groups has also generated shifts in laws and policies designed to provide humanitarian assistance in conflict situations.

Increased militarization and globalization of conflicts is a phenomenon of conflict in the 21<sup>st</sup> century. The 2002 UNIFEM Report on Women, War and Peace remarked on the economies of war', talking about the economic consequences of changed demographics due to conflicts and wars as well as about current global military spending as opposed to spending on measures that would prevent conflicts from breaking out. In addition, the reports points out that 'Militarization often forces men into committing acts of violence...Militaries rely not on men per se, but on men who behave in certain ways.'<sup>22</sup>

Human rights systems have the potential, and increasingly the practice, to respond to a wide range of issues affecting women in conflict and post conflict situations. Much remains to be done, however, to broaden and strengthen the standards governing protection and promotion of women's human rights in conflict situations, in post-conflict societies and in societies in transition, moving away from a framework focusing solely on violence and on the 'protection' of women, to a framework that is centred on the

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<sup>20</sup> Alert 2007, report on conflicts, human rights and peace building: Escola de Cultura de Pau (School for a Culture of Peace); Barcelona; 2007

<sup>21</sup> UNHCR Global Trends Report, 2009

<sup>22</sup> Rehn Elizabeth and Sirleaf, Ellen Johnson: Progress of the World's Women 2002, Volume 1: UNIFEM: New York, 2002

'protection of women's human rights'.<sup>23</sup> This framework should also engage with the many different effects of conflict in the economic, social, political, cultural and civil realms as well as engage with the complex (both positive and negative) psychological and ideological changes that flow from conflict and transition. The ***Convention on the Elimination of all Forms of Discrimination against Women***, and its expert Committee, have a critical role to play in developing and implementing this framework.

In order to strengthen the protections for women and girls in situations of conflict/post conflict, it is imperative to capture the diversity in the type and nature of contemporary conflicts, and the various roles that states, non state actors, international organizations, families, communities and individuals play in them. Conflict can vary from international to internal in scope and include direct hostilities as well as low-intensity conflict. A state may be a direct party to the conflict, a troop-contributing country, a mediator in formal peace making processes or a donor nation during conflict and post-conflict transition and the aftermath of conflict. Similarly, international and national non-governmental organizations through their humanitarian efforts, whether during or after hostilities, also become a 'party to the conflict' in a broad sense.

### **Impact of conflict on women: the contemporary check list**

Women are affected by wars and conflicts in a variety of ways, directly and indirectly. In some situations, women who play an active role in a conflict and who are political dissidents, for example, In the context of an on-going conflict, are subject to violations of their civil and political rights such as the freedom of movement and of expression, and are victims of abduction, disappearance, summary execution, arbitrary arrest and detention and torture. Women also sometimes face the reality of being arrested and detained as 'hostages' for their husbands or sons who are active in the conflict. Women who are active combatants in a conflict are also often subject to hostility and abuse not only by their opponents but even by their own communities because they have dared to challenge gender-based stereotypes and norms. In each of these cases, they face specific problems as women, including sexualised violence as a form of torture.

Women in conflict situations are also subjected to violations of their economic, social and cultural rights by being displaced from their homes and sources of livelihood, deprived of access to health and education, and of opportunities for political participation and denied the right to make autonomous choices regarding marriage and the family, including with regard to their reproductive and sexual lives.

The economic and socio-cultural dependence of many women on male family members makes women even more vulnerable in situations of conflict where their men folk are arrested or killed. There are reports of women in conflict zones moving into sex work, or bartering sexual favours in return for food or shelter, on finding themselves alone and responsible for the maintenance of families, with no skills or resources at their disposal. Conflicts often result in the collapse of law and order, paving the way for an increase in criminal activities and trafficking in human beings, which also heightens women's vulnerability to violence and abuse.

Attitudes and perceptions of women located within the dominant patriarchal and heteronormative framework support and justify discrimination and violence against women at all times; this situation is exacerbated during times of conflict, with the erosion of the rule of law and democratic institutions that undermine normal protection mechanisms, both formal and informal. In addition, the fact that most modern conflicts have emerged out of tensions generated by identity-based politics has led to the growth of various forms of extremism and fundamentalism within which a particularly conservative notion of women develops; the notion of women as bearers of the honour of a family and of a community has been critical in rendering women more vulnerable to sexualised attacks and abuse during times of conflict. Conflict situations create social and cultural environments in which women become embedded in cultural constructs that impose restrictions on their freedom and mobility. Families and communities encourage

and even force early marriages and pregnancies on young girls and women because of the fear that they may otherwise fall prey to 'violation' by the 'enemy'. Reports of women being forced onto early marriages and into early child-bearing are, for example, quite common in conflict situations.

Once considered a by-product of war, it is now recognized that women and girls are intentionally targeted for sexual abuse. There is a startling similarity in the types of sexualised violence perpetrated on women and girls in conflict situations, whether in Cambodia, Guatemala or Bosnia. Kelly Askin points out that 'various forms of sexual violence, especially rape and sexual slavery, are used methodically and strategically as weapons of war and instruments of terror...Sexual slavery, particularly in the form of forced marriage or enforced prostitution, is treated as a means of providing relatively safe, cheap and convenient sexual services to fighters'.<sup>24</sup>

These same social and cultural factors also create a range of difficulties for women in a post-conflict situation, making the reintegration of ex-combatant women into their families and communities, for example, an extremely difficult task. Women who have gained authority within the family and community during the time when the conflict was on-going find that in the process of return of men to their homes in the post-conflict and transitional moments there is often tension that arises out of non-recognition of the changes in social dynamics that have occurred during the conflict.

Feminist scholarship on the impact of conflict on women has focused on the dual nature of the impact, looking at the many drastic changes that take place in women's lives due to conflict as they make women more liable to victimhood, but also at times empower them and increase their agency. On the one hand, in a conflict situation, women find that the traditional barriers that restrict their participation in the public and political spheres often disappear. They have more opportunities to move into hitherto male-dominated areas of economic production, for example, as well as into political arenas. Women become community organizers and armed combatants, challenging existing stereotypes and creating new role models for themselves. On the other hand, as women and as members of marginalized communities, as a conflict intensifies or becomes more militarised, women find themselves extremely vulnerable to all forms of discrimination and violence, not only from external forces but from within their own families and communities.

## Historical Context

An examination of the history of wars and conflicts in the 20<sup>th</sup> century shows an astounding silence regarding the specific impact of war on women for the first fifty years. Although it is the experience of wars between nation states in the 20<sup>th</sup> century that paved the way for most of the international legal frameworks we know today, the conceptual and legal frameworks that emerged in the early years focused on the inhumanity of war without differentiating between men and women, or between the male and female experiences of war.

In 1948, the devastation and human suffering of World War II led to the adoption of the Universal Declaration of Human Rights by the United Nations, committing nations to 'the recognition of the inherent dignity and of the equal and inalienable right of all members of the human family' and calling for 'the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want'. The focus was on broad principles of equality and non-discrimination.

The four Geneva Conventions of 1949 set out the minimum standards by which wars should be conducted and included consideration of rights of those wounded in war, those who surrendered and those who became prisoners of war. References to women were only in terms of obligations to provide appropriate spaces and services for them. Common Article 3 of the Conventions, which specifically speak of conflicts that are not international in nature, prohibits violence, taking of hostages, outrages upon

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<sup>24</sup> Askin, Kelly D. *The Quest for Post-Conflict Gender Justice* in Columbia Journal of Transnational Law; Vol 41, New York, 2003.

personal dignity including humiliating and degrading treatment, and the passing of sentences and carrying out of executions without a judgment passed by a properly constituted court'. There is no gender-specificity to the prohibitions.

The silences and absences when it came to consideration of the impact of conflict on women is clearly borne out by history. For example, although there were ample records of sexual violence and abuse of women especially in east and southeast Asia during the Second World War, including the aspects of female sexual slavery, the matter never became a focus of attention, even at the Tokyo Tribunal which was established to inquire into the conduct of World War II in the Far East.<sup>25</sup> Prior to 2000, only the reports of truth and reconciliation mechanisms in Haiti, Guatemala and South Africa took gender-based crimes into account; since 2001, gender crimes have been specifically placed on the mandates and agendas of similar mechanisms in Peru, Sierra Leone and Timor Leste, for example.<sup>26</sup>

In the last decades of the 20<sup>th</sup> century, radical shifts in the nature of conflicts took place. States that were strong militarily and economically fell in the face of organized resistance by vast numbers of ordinary, and sometimes unarmed, civilians. In the wars in Indochina as in the uprising against the apartheid regime in South Africa, women played key roles as community organizers and militants; women also took over the tasks of maintaining families, and of caring for the young, the elderly, the infirm and those with disabilities. The disintegration of Yugoslavia and the ethnic conflict in Rwanda, though different in terms of the nature of the conflict, are both guaranteed a place in world history because of the enormity of the crimes committed against communities, and against women. In both situations, violence against women reached unprecedented levels. Contemporary definitions of gender-specific war crimes and of crimes against humanity such as mass rape, forced pregnancy and forced sterilization are based largely on experiences of women in these conflicts. The creation of the International Criminal Court in 2001 was the culmination of many initiatives by human rights and women's rights defenders around the world to develop a strong mechanism that could guarantee justice and accountability for the violations suffered by those affected by conflict, especially women.

In addition, reports of civil wars and of communal attacks against minority ethnic or religious groups, or against the Roma community, for example, multiplied in the 20<sup>th</sup> century. These were often not classified as 'conflicts' since they were more internal in nature. However, in terms of the consequences and impact on women, there were remarkable similarities. Records of these conflicts, for example, in Burma, in Colombia, in Gujarat in India, in Liberia, in Sri Lanka and in Sierra Leone all point to the tremendous violence inflicted on women during the course of the conflict as well as to the enormous economic and social burdens placed on women who had no choice but to replace male earners and heads of family with scant preparation.

The attacks on various targets in the US including the twin towers of the World Trade Centre in September 2001 led to a critical shift in approaches to conflict, with the focus on counter-terrorist measures eroding human rights principles and frameworks around the world. In 2005, the UN General Assembly approved the creation of the UN Peace Building Commission which had been proposed as a part of the overall process of UN Reform that began with the Millennium Summit and Declaration of 2000.

The UN Special Rapporteur on Human Rights and Counter-Terrorism, Martin Scheinin, in his 2008 report to the UN Human Rights Council offered an analysis of counter-terrorism measures from a gender perspective. While many of the measures discussed in the report relate to the human rights of women, he reiterated that gender is not synonymous with women, and, instead, encompasses the social constructions that underlie how women's and men's roles, functions and responsibilities, including in relation to sexual orientation and gender identity, are understood. Among key issues set out in the report are:

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<sup>25</sup> See report on judgment of The Women's International War Crimes Tribunal; Tokyo; 2001

<sup>26</sup> Askin, Kelly D and Strumpfen-Darrie, Christine: *Truth Commission Reports: Reporting only Half the Truth?* in Women and Human Rights Law: NY 2003

- identifying how those subject to gender-based abuse are often caught between targeting by terrorist groups and the State's counter-terrorism measures that may fail to prevent, investigate, prosecute or punish these acts and perpetrate new human rights violations with impunity.
- the ways in which these violations are amplified through war rhetoric and increased militarization in countering terrorism, both of which marginalize those who challenge or fall outside the boundaries of predetermined gender roles and involve situations of armed conflict and humanitarian crisis in which gender-based violence and gendered economic, social and cultural rights violations abound.
- the ways in which overly broad counter-terrorism measures have unduly penalized individuals on the basis of gender, including, for example, the activities of women's human rights defenders.
- Counter-terrorism measures have also had other significant gendered collateral effects that are often neither acknowledged nor compensated such as adverse impacts on female family members of those subject to disappearances and extraordinary rendition, and the use of collective sanctions against female relatives of suspected terrorists.
- counter-terrorism measures use gender stereotypes as a proxy for profiling on the basis of race, national or ethnic origin or religion, marginalizing individuals from targeted communities and subjecting them to greater discrimination and harassment by both private and public actors
- there are significant gender-based economic, social and cultural rights violations resulting from targeted sanctions and control orders, as well as the ways in which restrictive terrorism financing laws undermine the ability of charities to provide relief for gender-based violations, particularly those that occur in situations of humanitarian crisis.
- the use of gender-specific forms of interrogation techniques in the name of countering terrorism include sexual violence and other techniques aimed at emasculating male detainees.
- Restrictive immigration controls and asylum procedures disproportionately affect women and transgender asylum-seekers, refugees and immigrants, noting that probable links between anti-trafficking and counter-terrorism measures has been to the detriment of the human rights of trafficked persons, including women.

The report argues that while states are required to ensure the right to gender equality and non-discrimination as ends in themselves, a gender perspective is also integral to combating the conditions conducive to the spread of terrorism. In addition, the report draws attention to the fact that contrary to international human rights obligations to ensure equality, some states have used the human rights of women and lesbian, gay, bisexual, transgender and intersex individuals as a bartering tool to appease terrorist or extremist groups in ways that have furthered unequal gender relations and subjected such persons to increased violence.

Protecting human rights and especially the human rights of women in the context of conflicts thus presents us with a tremendous challenge and calls for a review of existing frameworks as well as for the creation of new ones that are more appropriate to contemporary realities.

### **Existing legal frameworks and protection mechanisms for women affected by conflict:**

Non-discrimination is the foundational principle that frames international human rights law. Yet, the capacity and commitment of states to provide for the tangible and practical implementation of their obligation to provide guarantees of non-discrimination and equality to all living within the borders of their state remains a distant dream. In Guatemala as in Kosovo, in Sierra Leone as in Sri Lanka, in Malaysia as in Uganda, women along with the poor, the tribal, the indigenous, the ethnic or linguistic minorities, those living outside the heteronormative structure are all subject to structural and institutional discrimination. In addition, women and those who challenge gender norms face discrimination and violence from within their families and communities because of the subordinate status of women and because of social and cultural resistance to 'gender bending' in most societies.

The phenomenon of violence against women not only as something that caused grave physical and psychological harm to women, but as a factor that affected economic and social development as a whole became a significant area of focus for women's activists around the world in the 1970s. At the time of the



drafting of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), violence against women was not recognised as a key concern and the issue of violence is not contained in the text of the Convention, which came into force in 1979. However, by 1992, the issue had become so much a part of the discussions on women's oppression that the CEDAW Committee elaborated a General Recommendation (No. 19) on Violence against Women, calling gender-based violence a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.

In 1991, the UN Refugee Agency (UNHCR) adopted their *Guidelines on the Protection of Refugee Women*. In keeping with the 1990 UNHCR Policy on Refugee Women, the *Guidelines* called for "integrating the resources and needs of refugee women into all aspects of programming so as to assure equitable protection and assistance activities." The *Guidelines* emphasize the intrinsic relationship that exists between protection and assistance and review the range of legal and physical protection needs that arise for females in refugee situations.

Identifying barriers to implementation, an Assessment done in 2002 pointed out that the UNHCR recognises the difficulties it has faced in translating these into practical measures in the field. For example, the relative absence of female staff is a serious obstacle both to obtaining information from refugee women and girls and to addressing the protection issues they face. Since 1996, the Annual Protection reports of the UNHCR require a chapter on refugee women, but generally reporting is unsystematic and follow-up and monitoring are weak. Similarly, Country Operations Plans require a specific focus on refugee women: while concerns are listed, there are often no corresponding activities planned to improve protection for women and girls. In addition, inadequate training impedes implementation of the *Guidelines*. The assessment found that many women and girls suffer from sexual and gender-based violence throughout their refugee experience, during flight, in refugee settings, and upon return. However, many cases go unreported because in most refugee settings there is little awareness about the problem and few coordinated efforts to prevent abuses and respond when abuses occur. The protection problems women faced as they accessed the services and protection mechanisms of the UNHCR are not limited to the time they spend as refugees in camps but may occur at any point during the conflict, in internal displacement, or during repatriation/resettlement.<sup>27</sup>

The Tribunal on Women's Human Rights at the NGO Forum in Vienna at the World Conference on Human Rights in Vienna in 1993, was the culmination of a strong and global campaign by women's activists around the world. The Tribunal aimed at drawing attention to the proliferation of violence against women in the public and private spheres and to claim protection under international human rights laws and standards for acts of violence against women, based on the understanding that violence against women constitutes a violation of women's human rights. The adoption of the UN Declaration on the Elimination of Violence against Women and the appointment of a Special Rapporteur on Violence against Women, its Causes and Consequences in 1994 are both results of this advocacy.

During the 1990s, conflicts in the former Yugoslavia and in Rwanda, especially as they played out on women's bodies, generated global shock and outrage. The establishment of Ad Hoc Tribunals for the former Yugoslavia (ICTY, in the Hague, Netherlands) and for Rwanda (ICTR, in Arusha, Tanzania), the framing of incidents of violence against women as war crimes and as crimes against humanity and the emphasis placed on gender balance on the benches and within the staff of the Tribunals advanced and expanded the framework of accountability for grave and gross violations of women's rights in conflict situations. The Rome Statute of the International Criminal Court (ICC) adopted in 2002 incorporated many of the gender related conceptual and legal issues that had emerged in the ICTY and the ICTR and

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<sup>27</sup> UNHCR, *Prevention and Response to Sexual and Gender-based Violence in Refugee Situations, Inter-Agency Lessons Learned Conference Proceedings* (Geneva: UNHCR), March 27-29, 2001.



was the culmination of the efforts of many women's rights and human rights advocates and defenders throughout the world.

Since 2004 the Women's Initiatives for Gender Justice has been monitoring the institutional and substantive progress of the ICC from a gender perspective. This includes advocacy for the prosecution of gender-based crimes in each of the situations under investigation, submission of legal filings, documentation of gender-based crimes and advocacy for reparative mechanisms and assistance to women by the Trust Fund for Victims. Among their concerns has been the delay in acceptance of women as key stakeholders, key partners and full citizens in the implementation of peace agreements. In particular, the WIGJ has challenged the processes that grant impunity to perpetrators of violence against women and violations of women's human rights during conflict in the interests of peace.

The Fourth World Conference on Women held in Beijing in 1995 provided a space for women activists working in conflict situations and concerned about the situation of women affected by in conflict. Section E of the Beijing Platform for Action, which is the Outcome Document of the Conference<sup>28</sup>, states that 'Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law'.

Among the recommendations of the Conference with regard to women affected by conflict were the increased participation of women in conflict resolution, the reduction of military expenditure and control of the availability of armaments, the reduction of incidence of human rights abuse in conflict situations and the provision of protection, assistance and training to refugee women, other displaced women in need of international protection and internally displaced women.

In 1998, the Special Representative of the Secretary General on internally Displaced Persons developed the Guiding Principles on Internal Displacement as a framework for ensuring protection of the rights of IDPs in the absence of any international human rights mechanism that could do so. In addition to prohibiting discrimination, the Guidelines clearly call for special protection and assistance to particular categories of women such as expectant mothers and female heads of household, and for the involvement of women in the planning and management of their relocation. Prohibition of violence including gender specific violence, and of sexual exploitation of all kinds, as well as a special focus on provision of appropriate health care services to women, including reproductive health care, as well as access to education, are all set out in the Guidelines. In 2005, the UN adopted the Principles on Housing and Property Restitution for Refugees and Displaced Persons<sup>29</sup> which made special reference to the need to undertake positive measures to ensure that the rights of women and girls to housing, land and property restitution are guaranteed.

The adoption of Resolution 1325 by the Security Council in 2000 spearheaded a new wave of interest in women, peace and security by the UN and by the international community as well as by women activists around the world. In particular, there is heightened focus on the roles of women in peace building and conflict transformation as well as in processes of reconstruction and reconciliation. The UNIFEM Report on the Progress of the World Women identified ten critical themes for a discussion on women, war and peace:

- Violence against Women;
- Displacement;
- Health;
- HIV/AIDs;
- Peace Operations;
- Organizing for Peace;
- Justice and Accountability;

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<sup>28</sup> The Beijing Declaration and Platform for Action; UN Dept of Public Information, New York; 1996

<sup>29</sup> Commonly known as the Pinheiro principles

- Media and Communications;
- Prevention;
- Reconstruction

In 2008, the UN Security Council adopted another resolution (1820) on sexual and other forms of violence against women affected by conflict. In 2009, through Resolution 1888, the UN accepted the creation of a new mechanism, the Special Representative of the Secretary General (SRSG) on Sexual Violence and Armed Conflict. Within the UN system, there is also an initiative titled UN Action against Sexual Violence in Conflict that seeks coherence on all mechanisms and measures created to prevent violence against women in conflict situations.

Although there is now a proliferation of mechanisms, policies and laws that speak to human rights protection during conflict situations, including some that pay particular attention to the protection of women and of women's rights in times of conflict as well as in transitional and post-conflict moments, women active in the promotion of peace and the protection of women's human rights express general frustration about the capacity of these mechanisms and instruments to provide real change on the ground for women whose lives have been subject to permanent and often terrible changes due to conflict. The lack of significant improvements in the situation of women in conflict situations continues to be a matter of grave concern.

### **Challenging the frameworks**

The changing nature of conflicts and of the impact of conflicts on women has seen a change take place in the approaches to the situation of women affected by conflict. The protectionist approach of many existing laws and policies has been challenged by women activists as well as by scholars who examined the impact of conflict on women from a broader perspective. This shift calls for moving beyond the traditional perception of women in terms of their roles in biological and social reproduction and taking into consideration the total impact of conflict on women.

There are several key challenges we face when trying to develop a framework based on existing international norms and standards that can enhance the protection of women's human rights in situations of conflict and that can ensure them of access to justice and accountability for any violations suffered by them in a post-conflict situation in an environment free of coercion and violence.

1. The need to develop a nexus between existing norms and standards in the human rights and humanitarian fields; the tensions and contradictions with regard to whether one prioritises 'protection' of women or protection of women's rights are factors that influence domestic and global policies with regard to the treatment of women affected by conflict;
2. The need to develop a strong framework to hold non-state actors accountable for violations of women's rights committed during the course of a conflict and in post-conflict situations;
3. The need to balance the strong focus on violence against women in times of conflict and other violations of women's rights that also take place during a conflict and in post-conflict situations;

### **Using the CEDAW Framework**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a reflection of the historical moment of its conception and birth. The references in the preamble to conflict and peace are framed within an understanding of the major conflicts of the 1980s: apartheid, occupation, post-colonial transformation and the call for nuclear disarmament. In its General Recommendation 19, the CEDAW Committee points out that gender-based violence impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law and constitutes discrimination within the meaning of article 1 of the Convention. The rights include the right to equal protection according to humanitarian norms in time of international or internal armed conflict and other related rights

such as the right to life; the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; the right to liberty and security of person; the right to equal protection under the law; the right to equality in the family; the right to the highest standard attainable of physical and mental health and the right to just and favourable conditions of work.

The issue of 'due diligence' which could be relevant to violations of women's rights committed by non-state actors can also be at least to some extent considered to be covered by Article 2(e) in which the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.

## **Moving forward**

The experiences of women and girls during conflict, in transition from conflict and in post-conflict situations including in processes of rehabilitation, reconstruction and reconciliation must be better understood in all complexity, if there is to be accountability, redress and justice for the rights violations they have suffered. Beyond the more straightforward issues of physical, including sexual and psychosocial, violence, conflict must also be understood in terms of its impact on economic and social rights such as right to own housing, land and property independently, right to have access to education and health, stable legal status, and access to employment, as well as on civil and political rights such as the freedom of movement, freedom of association and freedom of choice and self determination. At all times, the ways in which conflict situations can sharpen some, or all, forms of discrimination against women must be taken into careful consideration.

The type of conflict and the roles various actors play in a particular context as well as the stages through which the conflict progresses (active conflict, conflict transformation and transition and post conflict rebuilding) have direct and indirect implications for the rights of women and girls. So do the high levels of militarization and impunity that accompany any conflict, internal or international. The new economic and social opportunities created for some women by conflict situations can lead to the loss of status for others, especially those living outside of traditional households, those who are widowed or those who are disabled. This can result in the rise of abusive practices such as forced marriage, or smuggling of women and girls seeking escape from their constrained circumstances. When there are few legal means to earn livelihoods or to travel, women become more vulnerable to trafficking, and to being forced into a range of forced or exploitative labour sectors, including but not limited to forced prostitution and sex work. The high cost of war, rising defence expenditure and taxes also place an excessive burden on national economies, often at the expense of social sector spending. This leads to greater deprivation affecting the most marginalised and poor communities and increasing the burden on women.

Recognizing that the experiences of women and girls in conflict settings are linked to many aspects of their identities is critical to strengthening legal and policy frameworks that can promote and protect women's rights.

Among the specific areas that should be considered are:

1. The role of women combatants in armed militant groups and militias; to be considered with an understanding of the potential for overlap between being an active participant in, and being a victim of, conflict. Such discussion must include the discrimination faced by female combatants during conflict, from their families and communities as well as from within the armed group, as well as the discrimination female former combatants face post-conflict. Consideration of the lack of gender specific focus in processes of disarmament, de-mobilisation and re-integration (DDR) in post conflict societies is crucial.
2. The importance of women's civic and political participation and participation in decision making processes at all levels must be addressed, as well as their rights to determine their role in—and outside of—households and families. Fostering women's participation in consultative processes regarding relocation and resettlement in post-conflict situations as well as supporting their active

engagement with political structures and institutions is key.

3. The provision of sexual and reproductive health care services to women affected by conflict with a full understanding of the ways in which the context of conflict has eroded their decision-making powers with regard their right to control their sexuality and reproductive capacities.
4. The ways in which ethnicity, nationality, age, disability race, religion and sexuality are connected to gender during conflict and thus affect women in particular ways must be addressed by harnessing and strengthening CEDAW's existing framework for analysing intersectional discrimination, looking at the need to address immediate issues as well as the need to eliminate underlying barriers to equality in all aspects of women's lives.

The creation of a General Recommendation by the CEDAW Committee on the protection of women's human rights in conflict and post-conflict situations call for over-arching guarantees of non-discrimination and equality as well as for gender-specific approaches to conflict transformation, conflict resolution and peace building. create a framework for understanding these experiences from the perspective of the rights set out in CEDAW and how CEDAW interacts with the work of other treaty bodies as well as other U.N. mechanisms and international obligations;