

## **CEDAW Committee Consultation on Women in Conflict and Post-Conflict Contexts**

**Invited submission by Professor Christine Bell and Dr Catherine O'Rourke**

Peace agreements and processes typically involve a range of states, including the state within whose borders the conflict arises, neighbouring states involved in the regional dimensions of the conflict, states as members of involved inter-governmental organizations, states contributing to international peacekeeping forces, states as members of formal or informal contact groups, and donor states giving money to support peace process activities.

States should be aware that their CEDAW obligations apply not just to their domestic policies, but to their foreign policies, and their support of peace processes, peace agreement implementation, and post-conflict reconstruction processes. These processes involve extensive reconstruction of a state's constitutional, legal, and political order, and offer an unprecedented opportunity to better protect, promote, and fulfil the rights of women. However, in practice, peace agreements can fail to consider the position of women, or even diminish women's status.

State parties should ensure that they have a clear plan for how to promote and ensure compliance with CEDAW through every aspect of their engagement with peace processes, peace agreement implementation, and post-conflict reconstruction processes in whatever form that engagement takes.

### **Article 2**

**States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:**

**(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.**

States should recognize that framework peace agreements operate as broad political constitutional documents, whether they contain legal constitutions or not, and states should ensure that peace agreements include a commitment to the principle of equality of men and women within their text.

The peace agreement should acknowledge the state's commitment to CEDAW and its optional protocol, and commit to ensure that future legislative and constitutional processes contemplated in the peace agreement are compliant with CEDAW.

Where the peace agreement includes a legal constitution or sets out a constitutional reform process, all steps should be taken to ensure that the equality of men and women is given effect to in terms of the design of the process, and enshrined in any legal constitution which results.

Where possible legal and constitutional reform processes should aim to ensure the 'effective participation' of women.

Where an institutional framework for implementing peace agreement commitments is provided, that framework should include a clearly resourced mechanism to enforce and ensure that the equality provisions of the peace agreement are implemented.

**(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;**

Post-conflict rule of law reconstruction, including provision of new legislation, disciplinary codes for police and armies, and revision to existing legislation undertaken as a result of the peace process, should ensure prohibition of all forms of discrimination against women, with criminal, civil and disciplinary sanctions used where appropriate.

**(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;**

Peace agreements that provide for institutional reform, should establish a national women's machinery to ensure the promotion and protection of equality for women. Reform of the state's legislation and national tribunals, courts and public institutions should include specific measures aimed at protecting women against any act of discrimination. In particular, post-agreement security sector reform of police, army and judiciary, should take place in accordance with the principle of equality of women and men. Peace agreement provision for security sector reform should ensure that recruitment and promotion procedures respect the principle of equality.

Steps should be taken to ensure adequate representation of women on such tribunals and in public institutions as a goal of institutional reform.

Ad hoc or temporary justice institutions established by peace agreements, including but not limited to:

- Transitional justice mechanisms
- Commissions of inquiry
- Bodies to ensure release of prisoners, and bodies ensuring return of refugees and displaced persons

Should:

- Include commitments to gender equality in their mandates,
- Guarantee equal access to women
- Address the particular barriers to access of women which exist
- Take particular steps to prevent and address gender-based violence against women
- Include staffing provisions and procedures appropriate to ensuring the effective implementation of these commitments.

States should ensure that reparations laws, policies and programmes, respect the principle of non-discrimination and pay due regard to the possible equality impact on women of any particular reparation mechanism chosen.

**(d) to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity.**

Post-agreement security sector reform should ensure that all security sector institutions have in place mechanisms sanctioning violation of the principle of equality through criminal, civil and disciplinary mechanisms as appropriate.

The state's national women's machinery could provide an oversight mechanism to ensure respect for the principle of equality in security sector reform.

International oversight bodies should include appropriate gender representation, have access to gender-advice, have mechanisms for complaint on grounds of discrimination, and generally take steps to ensure that women have equal access to their oversight mechanism.

**(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;**

Peace agreements should recognize that violence during a conflict that targets women, or groups in which women are known to be disproportionately represented, such as civilians, constitutes violence against women, and is discriminatory against women.

State parties should also recognize that both during violent conflict and in post-conflict periods, women experience forms of gender-based violence that are different from men, including sexual violence, and that these forms of violence constitute discrimination against women.

State parties should recognise that gender inequalities that precede conflict, including women's disadvantage in health, education and employment, make women particularly vulnerable to certain forms of violence during conflict. State efforts to end violence against women at the end of conflict must also address the gender inequalities that foster such violence.

Peace agreements should acknowledge that state obligations to prohibit, prevent, and punish violence by private actors against women, pertains both during conflict, and post-conflict.

Peace agreements should ensure that new businesses, development organizations, and banking structures established as part of post-conflict reconstruction, do not discriminate against women.

**(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;**

Peace agreements and post-conflict reconstruction processes should ensure that constitutional reform that gives place to traditional laws or local justice practices, is compliant with CEDAW equality provisions, and ensures that traditional or local practices are not discriminatory against women, and are to be implemented within a wider framework for equality.

Transitional justice processes that draw on traditional or restorative practices should not be implemented without adequate consultation with women, and then be designed not to be discriminatory against women, but to be implemented in accordance with CEDAW equality obligations.

**(g) To repeal all national penal provisions which constitute discrimination against women.**

Where peace agreements provide for the review of existing criminal laws, states should recognize that laws criminalizing medical procedures only needed by women, and that punish women who undergo those procedures, are discriminatory.

**Article 4**

**1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.**

**2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.**

Where peace agreements provide for power-sharing arrangements on grounds of political affiliation or ethnicity, they should also include measures to ensure the representation of women, including gender quotas.

Bodies established to monitor and implement peace agreements should include significant representation of women and appropriate gender expertise, and have gender-sensitive mechanisms of access.

Temporary transitional bodies, including bodies tasked with the development of constitutions, or interim administrative or legislative bodies, should contain significant representation of women.

New democratic institutions established by peace agreements should include gender quotas to ensure the presence of women at local, regional, and national levels of government. In particular, states should ensure that:

- New electoral systems aimed at proportional representation, consider how the representation of women can be improved through use of quotas or otherwise
- Power-sharing executives, with proportional representation from different ethnic or political groups, should include specific provision ensuring the representation of women within ethnic or political group representation, as well as additional to ethnic or political group representation

**Article 5**

**States Parties shall take all appropriate measures:**

**(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;**

The inclusion of women in peace negotiations can challenge social and cultural patterns that marginalize women from political, social and cultural life. All state parties involved in peace negotiations, should take steps to ensure the inclusion of women.

Gender specific language naming specific harms against women, for example, as part of a definition of ceasefire violations or reparations policy, can challenge the normalization of these harms against women in transitions from conflict-to-peace.

Peace agreements often devolve power to sub-state groups on grounds of religious or political or ethnic affiliation, in social and cultural areas such as education. Where conceptual autonomy over social and cultural practices is so devolved, states must continue to ensure that that autonomy is exercised in compliance with the strong equality provisions of CEDAW.

Quotas designed to give effective participation to minority or indigenous groups, should be designed in such a way so as not to discriminate against women members of the group.

**Article 6**

**States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.**

There is substantial evidence of an increase in the trafficking and exploitation of prostitution of women where armies and military personnel are present. Peace agreements providing for

disarmament, demobilization and reintegration (DDR), and DDR implementation processes, should include robust measures to protect women from sexual exploitation, including:

- Specific protection for women combatants being demobilized.
- Specific protection for women in close proximity to where demobilized troops are quartered
- Such processes should have specialized complaint mechanisms, staffed by trained staff, appropriate to enabling sexual violence and issues of trafficking, exploitation and prostitution to be raised

States contributing forces to international peacekeeping operations should ensure that:

- The peacekeeping mandate has adequate sanction for sexual exploitation and violence against women,
- That there are clear disciplinary processes in place with regard to sexual exploitation.

### **Article 7**

**States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:**

**(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;**

**(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;**

**(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.**

Peace agreement provision for electoral reform should ensure that reform aims for equality of women, and include provision aimed at ensuring that women can access electoral participation.

Where peace agreements provide for power-sharing or consociational mechanisms, aimed at 'effective participation' of ethnic or political groups, consideration should be given to gender equality, and how the effective participation of women can also be achieved.

Where new systems of proportional representation are designed, the impact on women's ability to get elected should be fully worked through, and considered as one of the factors influencing the choice of design.

Where women are unlikely to be equally represented in new governmental structures, further measures should be put in place, including consultation mechanisms, such as through the National Women's Machinery, to ensure that women can participate in the formulation of government policy.

New institutions established as a result of the peace agreement should make provision for the inclusion of women.

Where possible, peace agreements and constitutions should guarantee the freedom to operate of non-governmental organizations, including women's organisations, and provide mechanisms for them to be consulted with reference to relevant public policy.

### **Article 8**

**States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.**

Negotiating parties to a peace agreement should include women as representatives.

Mediating teams should also include women as representatives, and in particular in senior roles.

Peace negotiations should consider the appointment of gender advisors to advise the talks process on how to protect, promote and fulfil, equality for women.

### ***Article 9***

**1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.**

**2. States Parties shall grant women equal rights with men with respect to the nationality of their children.**

Peace agreements providing for the review of state borders should ensure that women are not left stateless through changes to state borders due to different nationality laws prevailing in the relevant states.

Peace agreements frequently provide for ratification of international human rights treaties. Peace agreements should include ratification of the Convention on the Nationality of Married Women.

Peace agreements which re-define nationality should be designed not to be directly discriminatory against women, and proofed in terms of their impact on women.

### ***Article 12***

**1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.**

**2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.**

Peace agreements providing for humanitarian aid and the resettlement of displaced populations should make provision for the gender-specific post-conflict health needs of women, such as anti-retroviral drugs and fistula repair surgery for women victims of sexual violence.

Peace agreements should provide for socio-economic rights, including rights to healthcare.

The particular healthcare needs of demobilizing female combatants should be provided for.

Gender-based violence is a critical issue for women's health in conflict and post-conflict states. Peace agreements should establish robust procedures to ensure that violence against women does not move from public to private spheres at the end of conflict, in particular in the

homes and communities to which demobilized combatants return. Peace agreement provision for security sector reform should ensure that reformed institutions of police and criminal justice commit appropriate resources to prohibiting, preventing and punishing violence against women perpetrated by private actors in the post-conflict state.

### **Article 15**

#### **1. States Parties shall accord to women equality with men before the law.**

Women must be treated on a basis of equality with men in the legal and quasi-legal mechanisms established to deal with the mass human rights violations of past conflict. Transitional justice mechanisms aiming to deliver retributive justice, truth, and reparations to conflict victims should give explicit legal recognition to the principle of equality between women and men. Particular provision for gender-specific truth, justice and reparations needs of women should be recognized as consistent with the principle of equality between men and women before the law.

Transitional justice mechanisms should have specialised mechanisms enabling women to raise issues of gender-based violence, including sexual violence.

#### **Recommendations to State Parties**

1. State parties should ensure that national action plans to implement UNSC Resolution 1325 and subsequent resolutions are compliant with CEDAW, and aimed at achieving equality of women as contemplated by CEDAW.
2. In their periodic reports to CEDAW, state parties should detail their activities to implement UNSC Resolution 1325 in their domestic and foreign policy.
3. In their engagement with transitional justice mechanisms, domestically and internationally, states should commit to a baseline principle of 'do no harm' to women. This principle should be based on the idea that the peace agreement and post-conflict reconstruction processes at the least should not increase discrimination against women. This baseline principle should be informed by an understanding of how violence can move from public to private spheres in the transition from conflict-to-peace. In particular, compromises on justice and accountability should not be conceded at the cost of increased gender-based violence against women in the homes and communities to which demobilized combatants return. Further, the implementation of alternative local forms of transitional justice should not re-privilege former combatants within the local community, at the expense of long-established women's organizations in the community.